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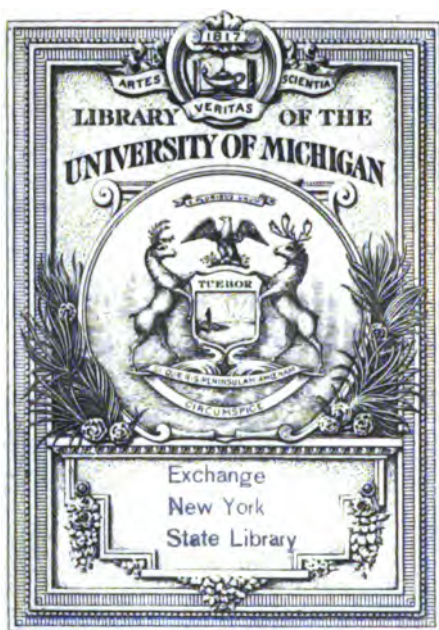
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1920

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ALBANY
J. B. LYON COMPANY, PRINTERS
1920

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1920

COMMISSIONERS

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¹ Resigned, effective January 1, 1919.

² Appointed April 18, 1919, vice Cheney, term expired.

The Public Service Commission, Second District of the State of New York, was appointed pursuant to the provisions of chapter 429 of the laws of that State for the year 1907, and took office July 1, 1907. It is the practice of the Commission to file written opinions in such contested matters coming before it as seem to demand careful statement of the grounds for the decision. It is also the practice in *ex parte* applications to file written opinions, where the facts are complicated or an interpretation of the laws conferring jurisdiction upon the Commission is required. These opinions are first printed in pamphlet form, and will be published in bound volumes from time to time.

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In the Matter of the Application (complaint) of MUNICIPAL GAS COMPANY OF THE CITY OF ALBANY for an order authorizing it to increase rates for gas in the city of Watervliet, the town of Green Island, the incorporated village of Green Island, and the town of Colonie, all in Albany county. [Case No. 6627.]

The maximum of one dollar per thousand cubic feet to be charged for illuminating gas "manufactured, furnished or sold" in the city of Albany, does not apply to gas manufactured in said city and transmitted by means of pipes and sold to private consumers in the neighboring municipalities of Watervliet and Green Island.

Decided January 2, 1919.

Appearances:

Neile F. Towner, Albany, N. Y., for the applicant.

Edwin Joslin, Mayor, and *W. S. Russell*, Deputy Corporation Counsel, Watervliet, N. Y., for the City of Watervliet.

John W. Kenny, 513 23rd street, Watervliet, N. Y., for consumers in Watervliet.

L. D. C. Woodward, Watervliet, N. Y., President of the Chamber of Commerce of Watervliet.

Frank H. Deal, Green Island, N. Y., for the Village of Green Island, the Town of Green Island, and the Chamber of Commerce of the Village of Green Island.

HILL, Chairman:

Prior to 1888 the Municipal Gas Company of the City of Albany was a lighting corporation duly organized under the laws of the State of New York, its business being confined to the city of Albany. By chapter 287 of the laws of 1888 the company was authorized to extend its business to any places within ten miles of the city of Albany with certain specified exceptions. Thereafter and before 1907 the company, pursuant to this authority, duly extended its gas mains

to what are now the neighboring city of Watervliet, and village and town of Green Island, and supplied gas to those communities by manufacturing the same at its Albany plant and transmitting it through pipes to the places mentioned, where it was and still is sold to private consumers for lighting purposes in the usual way. While the company was thus conducting its business, chapter 227 of the laws of 1907 became a law. This statute is entitled "An Act in relation to illuminating gas in the city of Albany and regulating the quality and pressure thereof and the price to consumers other than said city and providing a penalty for violations".

Section 1 provides that a corporation . . . engaged in the business of manufacturing, furnishing, or selling illuminating gas in the city of Albany shall not charge or receive for gas manufactured, furnished, or sold in said city a sum in excess of one dollar per one thousand cubic feet. Section 2, after prescribing the quality of the gas to be furnished, provides that "the pressure of illuminating gas in any service mains in the said city at any distance from the place of manufacture shall not be less than one inch nor more than two and one-half inches". For several years after the adoption of this statute the company, while refraining from charging more than one dollar per thousand cubic feet in the city of Albany, continued to charge in excess of that sum in Watervliet and Green Island without any claim being raised that the statute applied. In 1913 the price charged there was \$1.20, and on complaint of the City of Watervliet was reduced to a graduated price of \$1.10 for 1914, \$1.05 for 1915, and \$1 for 1916 and thenceforward until the further order of the Commission. The price thus having been fixed at one dollar, the company has now filed its complaint with the Commission under section 72 of the Public Service Commissions Law for an order increasing such rates, and the City of Watervliet, the Village of Green Island, and Town of Green Island, in opposition, demand the dismissal of the complaint on the ground that the statute of 1907

applies to the price to be charged or received in those places, by reason of the fact that although the gas is not sold in Albany it is manufactured there, and the language of section 1 applies to all gas "manufactured, furnished, or sold" in the city of Albany.

Examining the statute critically with a view to determining its territorial application, we find that no locality other than the city of Albany is mentioned, and that the provision prescribing the pressure relates in terms exclusively to that city; and referring to the title we find that only the city of Albany is there mentioned, and that the language there used with respect to the pressure to be maintained plainly implies that the prescribed pressure relates to all the territory covered by the law itself. We think in view of the considerations mentioned it is proper to refer to the title for aid in discovering the design of the legislation (*People ex rel. v. Coleman*, 121 N. Y. 542), and that when the various provisions of the law are considered in connection with the title it becomes clear that it was intended to apply only to gas distributed and sold within the city of Albany itself.

This view is further strengthened by the fact that the statute fixes a penalty and is in derogation of common law rights, both of which features call for its strict construction. (*People v. Briggs*, 193 N. Y. 457; *Jones v. City of Albany*, 151 N. Y. 223.)

Words used in the disjunctive are often converted in statutory construction when the evident intent of the law-makers requires it. (*People ex rel. v. Rice*, 138 N. Y. 156; *People ex rel. v. Public Service Commission*, 224 N. Y. 165.)

In conformity with the views above expressed, the motions to dismiss the complaint are overruled.

Commissioners Irvine, Barhite, and Fennell concur.

In the Matter of the Petition of GEORGE BULLOCK, as RECEIVER BUFFALO AND LAKE ERIE TRACTION COMPANY, under subdivision 1, section 49 of Public Service Commissions Law for permission to increase the fare charged passengers on interurban cars of said railroad to 2½ cents per mile. [Case No. 6217.]

Although it may not be of permanent benefit to grant an increased fare on account of the desperate financial conditions of a trolley line, such fare may be granted with the hope of preserving the road for the public until a more favorable financial condition of the country may lead to permanent relief.

Decided January 14, 1919.

Appearances:

Lyman M. Bass, Esq., of Buffalo, N. Y., and *M. G. Bogue, Esq.*, of New York city, appeared for George Bullock, as Receiver of the Buffalo and Lake Erie Traction Company, who also appeared in person.

L. J. Monroe, Esq., of Fredonia, appeared as attorney for the Village of Fredonia and Town of Pomfret.

L. L. Ottaway, Esq., of Westfield, appeared as attorney for the Village of Westfield, Town of Ripley, Town of Portland, Village of Brocton, Hamlet of Ripley, and Hamlet of Portland.

D. K. Falvey, Esq., of Westfield, appeared for the Town of Westfield.

Hon. Joseph A. McGinnies appeared for the Town of Ripley.

Fred Parker, Esq., *George Haywood, Esq.*, *E. C. Lewis, Esq.*, and *O. A. Ottaway, Esq.*, appeared for the Town of Portland.

George R. Pettit, Supervisor, appeared for the Town of Portland.

Lyman A. Kilburn, Esq., of Dunkirk, appeared as attorney for City of Dunkirk.

Fred M. Thayer, President, appeared for the Village of Brocton.

H. M. Fleming, Clerk, appeared for the Village of Brocton.

Robert Douglas, Supervisor, appeared for the Town of Westfield.

Thomas J. Cummings, Esq., and *G. W. Woodin, Esq.*, of Dunkirk, appeared as attorneys for Merchants' Exchange of Dunkirk and Dunkirk Real Estate Exchange, and taxpayers generally.

Nelson J. Palmer, Esq., of Dunkirk, appeared for Dunkirk Board of Trade.

BARHITE, Commissioner:

This is an application by the Receiver of the Buffalo and Lake Erie Traction Company for permission to increase the interurban rates upon the road represented by him, within the State of New York, from two to three cents per mile. The road extends from the city of Erie, Penna., to the city of Buffalo, N. Y. About twenty miles of the line are within the State of Pennsylvania, and about 68.71 miles of the line, including the mileage operated by it within the city of Buffalo, are within the State of New York. The intrastate service within the State of New York is now on a basis of two cents per mile; and the first application was for a right to increase the rate to two and one-half cents per mile, and later to two and three-quarter cents per mile, and finally to three cents per mile. The authorities of the State of Pennsylvania have granted a rate of three cents per mile, and the United States authorities have granted the same rate for the interstate business. The receiver filed with this Commission schedules which call for a three cent rate, effective September 8, 1918, but this proposed rate has been suspended by the Commission until its investigation is concluded. This road

has been in the hands of a receiver since July, 1915. Were it not for the fact that the Commission desires if possible to preserve the road for the use of the adjacent community until such time as the financial condition of the country may extend some hope of a reorganization upon a basis that will preserve the road permanently for the benefit of its patrons, no increase in fare would be granted, because the present financial condition of the road is so bad that no rate of fare that can in reason be granted will ever place the road in a sound financial condition. For this condition the receiver is not to blame, but he is compelled by his position to assume a burden which can not be shifted however burdensome or unpleasant. The receiver has very frankly and publicly stated to the Commission that he is uncertain whether an increase in fare will solve his difficulties. The Commission does not approve of the method by which the affairs of trolley roads are tied up in the hands of receivers for a number of years. Receiverships are often necessary and beneficial by holding the affairs of a public service corporation in *status quo* until time is given to adjust its affairs and preserve the benefits of the corporation for the public, but the retention of a receiver year after year usually is of no benefit to the interests of either the corporation or the public.

Evidence was given tending to show the financial condition of the property by figures submitted by the receiver as to the value of the property, which are those made by a competent firm of well known engineers and are based upon an investigation made in 1914 with prices as of January 1, 1917, less the estimated depreciation. These figures are: Hamburg division, \$1,374,966; interurban lines in New York state, \$4,567,249; Dunkirk Street Railway, \$251,440; Dunkirk and Point Gratiot Railway, \$36,452: total \$6,230,107. It may be stated that the Dunkirk Street Railway is not a part of the Buffalo and Lake Erie Traction Company but is managed by the receiver through his ownership of the entire capital stock of that company, so

that the valuation of this company should be taken from the above total, leaving a balance of \$5,978,667. The valuation of the lines in Pennsylvania is placed at \$3,575,863, making a total of \$9,554,530. These figures, however, are not important, because the rate of fare proposed will not pay any return on investment.

Since the report of the experts, improvements and expenditures have been made on the entire system amounting to \$825,497.05. Of this sum, \$44,477.82 was expended on the interurban system within the State of Pennsylvania, and \$409,055.29 on the Erie City division, leaving \$371,963.93 as the amount of expenditure within New York state. Some additional expenditures have been made within the city of Erie by the sale of receiver's certificates to the United States Government. Against this property there are mortgages amounting to \$11,542,800, bearing an annual interest charge of \$548,003. In addition, there is a floating debt of over \$116,000; and the receiver has succeeded in selling over \$1,000,000 of receiver's certificates bearing interest which must be added to the other debts. It is true that \$350,250 interest charge in the above amount is payable upon the mortgage in process of foreclosure in the suit in which the receiver was appointed, and he does not actually pay that interest; but nevertheless the interest is accumulating, and if the money can be obtained must some time be paid, and must be taken into consideration in an examination of the financial condition of the road. It has come to the knowledge of the Commission that a separate receiver has been appointed for one of the roads operated by the receiver in this proceeding because of the non-payment of interest on the mortgage on that road, which was the rental paid for the use of that road. If the receiver in this proceeding continues to operate that road, he doubtless must make arrangements to pay rental.

The reports of operations for the past few years show the necessity for more fare. It has been suggested that these reports show that under the receiver the road is financially in better condition than in previous years and that this condition is apparently growing better. It is true that for a

short time after the appointment of the receiver the net corporate loss from operations appears to be decreasing, but this may be explained by the fact that the number of passengers carried since July 1, 1915, has been steadily increasing. But the reports of the company for 1917 and for the first nine months of 1918 tell a different story, and give the enormous increase in operating expenses which has affected all business during the period named. For the first nine months of 1917 the income of the road was \$1,288,339, operating expenses \$868,700: net operating revenue \$419,548. For the first nine months of 1918 the income was \$1,508,687, operating expenses \$1,311,725: net operating revenue \$196,687. Of course the above figures do not include any interest, tax, or rent charge. While the income for nine months of 1918 exceeded that of the corresponding nine months of 1917 by \$220,348, the operating expense for the same period of 1918 shows an increase of \$442,935 over the corresponding period of 1917. Since May 1, 1918, the War Board at Washington has granted increases in wages which have been accepted by the receiver and which make approximately an increased expense of \$200,000 per year.

The reports of the company show a net corporate deficit for the first nine months of 1917 of \$121,425.09; for the same period of 1918 the amount is \$365,871.11. The separate figures for New York state are not available, but as the receiver operates about sixty-nine miles of road in New York state and only about twenty miles in Pennsylvania, and as higher fares have been granted and been in operation in Pennsylvania for some time, it is quite apparent that the larger part of the losses noted occurs in the operation of the road in New York state.

The tariffs filed by the receiver, the operation of which is now under a suspension order of the Commission, should be put into effect for a short period of time, not to exceed six months after the declaration of peace.

Chairman Hill and Commissioner Irvine concur; Commissioner Fennell not present.

In the Matter of the Petition and Supplemental Petition of the LAWRENCE PARK HEAT, LIGHT AND POWER COMPANY under section 68 of the Public Service Commissions Law for permission to exercise certain rights and privileges granted to it by the Village of Bronxville December 20, 1917.

Also Order to Show Cause issued May 21, 1918, in same case, why petitioner should not discontinue operations under the permit described in petition. [Case No. 5739.]

1. Where a lighting corporation organized under the Transportation Corporations Law is manufacturing, distributing, and selling electric current for profit to a large number of tenants in various buildings controlled by the same persons who control the lighting corporation, such service is public service and falls under the supervision and jurisdiction of the Public Service Commission.

2. The Public Service Commission will not grant a certificate of public convenience and necessity with respect to the exercise of a permit granted by local authorities over the public streets of a village which is not named in the certificate of incorporation of the lighting company which is the grantee of such permit.

Decided January 21, 1919.

Appearances:

Joseph S. Wood, Mount Vernon, N. Y., *Wm. Lloyd Kitchell*, 40 Wall street, New York, with him on the brief, for petitioner.

John J. Crennan, New Rochelle, N. Y., and *Martin S. Decker*, Albany, N. Y., for Westchester Lighting Company.

A. D. Britton, Bronxville, N. Y., Village Attorney, for the Village of Bronxville.

HILL, Chairman:

This is a petition by the Lawrence Park Heat, Light and Power Company, under section 68 of the Public Service Commissions Law, praying for the permission and approval of the Commission to and of the exercise by petitioner of

all the rights and privileges granted to it by the Village of Bronxville on the 20th day of December, 1917. The so called permit authorizes the petitioner to lay and maintain an underground conduit with wires, cables, and other conductors for conducting electricity under the surface of certain streets and highways (a distance of about 570 feet) for the purpose of supplying electricity to the occupants of certain buildings facing on said streets and highways, known and designated as the Colonial Building on Pondfield road, and the Brick Row on Kraft avenue, which buildings are stated to be owned by the Village Investment Company, and to said occupants only.

The petitioner was duly incorporated in the year 1905, pursuant to the provisions of Article VI of the Transportation Corporations Law, for the purpose, among others, "to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, and distribute electric current for heat, light, and power"; and is owned and controlled by members of the Lawrence family, who also own or control the Village Investment Company and various large buildings in the village, including the Gramatan Hotel, the Investment Company in turn owning the Colonial Building and the Brick Row above mentioned. At the present time the electric lighting of petitioner is confined to the various Lawrence buildings and the tenants therein: the number of customers is 225, and the yearly revenue therefrom about \$18,000, the contracts being made by the company direct with the tenants. These tenants consist of both residence and business occupants.

The petition is opposed by the Westchester Lighting Company, a rival concern which does the public lighting in the village and also its general commercial lighting. At the time the petition was filed the petitioner was and ever since has been exercising the permit which forms the subject of the petition, and the opposing company had complained to the Commission that such use was unlawful. An order to show cause why it should not refrain from further exercise

of the permit was thereupon issued by the Commission directed to the petitioner. As a result, the petition was filed and the order and petition were heard together, and will both be disposed of by the order now to be made.

The relations of the petitioner to the business of electric lighting in the village of Bronxville and to the contesting company have been dealt with previously by the Commission, and were the subject of an order made October 9, 1917, to which it is now desirable to refer.

In August, 1916, the Lawrence Park Company secured a so called franchise from the authorities of the Village of Bronxville. The village, having contracted with the company to do certain public lighting, gave it the franchise in question to extend its wires in the necessary public places which would enable it to enter into competition with the Westchester Company in public lighting service. It then applied to this Commission, pursuant to section 68 of the Public Service Commissions Law, for the requisite certificate of public convenience and necessity with respect to such franchise, its petition being strongly opposed by the Westchester Company. The result was a denial of the application by the Commission. All the facts, including the history of both companies, were stated and discussed at much length in an Opinion by Commissioner Emmet. (*Lawrence Park Light, Heat & Power Company*, VI P. S. C. N. Y. 2d Dist. 288.)

It was there incidentally disclosed that the Lawrence Park Company had in 1914 procured from the village permission to carry two wires across one of the highways for the purpose of supplying the Colonial Building with electricity, and had applied for and obtained from the Commission a certificate of public convenience and necessity with respect to such wires and had installed and made use of the same; and it now appears that later a similar certificate was obtained to permit the company to reach the Brick Row through an extension of the same wires.

While the above mentioned controversy was pending undetermined, and in May, 1917, an emergency arose which the Commission took in hand informally. It seems that certain grade crossings were being eliminated in the village of Bronxville, the completion of which involved the question pending as to which of the two companies should be allowed to do the public lighting of the Plaza, which was the subject of the dispute; it was requisite that the construction of the necessary conduits be proceeded with without waiting for the outcome of the controversy. Thereupon, with the informal approval of the Commission, the conduit was laid by the Lawrence Company under an agreement with the Westchester Company, by the terms of which the company which succeeded in the controversy was to pay for and acquire the conduit. In the end, however, a joint ownership was arranged by virtue of which each company retains one set of wires; and it is the wires in this conduit retained by the Lawrence Company which it is now using to light the Colonial Building and Brick Row, and which form the subject of this application.

In order to dispose of this controversy we think it is important first to determine definitely whether or not the service proposed to be supplied under the permit described in the petition is or is not of the nature of public service such as falls under the jurisdiction of the Commission.

The petitioner seems to assume that if it is found to be engaged in public service in the use of the wires in question, then its petition must be denied on the authority of the determination which was made in the former controversy. We think that determination has no such effect. The petitioner company was at that time operating under a certificate of public convenience and necessity, the granting of which was necessarily predicated on the service being of a public character, and the determination referred to had only the effect of deciding that the particular public lighting there in dispute should be given to its competitor, the Westchester

Company; and we think it may be said to be a determination also that the Commission felt that the Westchester Company was entitled to be protected in the monopoly of the public and general commercial lighting of the village.

It was not, however, a decision which determined the legal character of the Lawrence Company or of its business. Although deprived of the lighting in question, it does not at all follow that its legal character was changed, or that the lighting which it is now doing is not in the nature of public service. To be sure, upon the evidence then before the Commission the view was expressed that the service was not of a public character, but this seems to have been on the assumption that the company was supplying only four customers; whereas it appears in the present record that the customers are 225 in number, and that the volume of its business in the village is about \$18,000 per annum and about equal to that done by the competing company; that was not, however, the ground of the decision.

We are of the opinion that the present electric lighting business of the Lawrence Company is of the nature of public service. The Public Service Commissions Law was intended primarily for the protection of the patrons of companies and individuals furnishing various classes of service to the public. We do not believe that under that statute to sustain the character of public service the utility must be one which is offered to the public indiscriminately, which has been the test applied in some of the states, nor that the making of special contracts by the producer upon its own terms necessarily robs it of its public character. The jurisdiction of the Commission extends, by virtue of section 64 of the Public Service Commissions Law, to the "generation, furnishing and transmission of electricity for light, heat or power". Under section 65 it is given power over "every electrical corporation". Section 2 defines an electrical corporation to include every . . . corporation . . . owning, operating or managing any electric plant, except where

electricity is generated or distributed by the producer solely . . . for its own use, or the use of its tenants, and not for sale to others. Section 1 provides that the law shall apply to the "public services herein described". It thus appears that the generation and furnishing of electricity for light, heat, and power, by any corporation . . . owning, operating or managing any electric plant, unless done solely for the producer's own use or the use of his tenants, so that none is for sale to others, is a public service within the meaning of the statute.

The determination of the Commission in *Fulton L. H. & P. Co. v. Granby Co. et al.*, V P. S. C. N. Y. 2d Dist. 340, has no application, because in that case the company complained of was not distributing power for sale to others, but was simply transmitting it across a highway for its own use.

"The proposition that the construction and operation of a lighting system by an electrical corporation is beyond the supervision of the Public Service Commission so long as the electric current is sold and distributed upon private property, contravenes some of the most important purposes for which the Public Service Commission was created and given supervision of this class of public utilities, viz. the protection of the public from improper and dangerous construction, from exorbitant charges, and the protection of the corporation itself from disastrous competition." (*People ex rel. Oneonta L. & P. Co. v. Pub. Serv. Comm.*, 180 A. D. 32; affirmed 224 N. Y. Memoranda p. 86.)

Unless the service for which the permit is to be used is a public service, a certificate of public convenience and necessity as prayed for would be a contradiction in terms. We have determined, however, that the proposed service is of a public character, and we must next determine whether or not the certificate shall be granted. In the consideration of this question we are met with the objection that the village of Bronxville is not named in the certificate of incorporation of the Lawrence Company as one of the towns, vil-

lages, or cities in which the operations of the corporation are to be carried on, as required by the provisions of section 60 of the Transportation Corporations Law. The certificate does name the town of Eastchester within the boundaries of which the village of Bronxville lies. But every village lies within a town, and the statute requires that the village shall be named. A town government could not grant the right to do public lighting or to place lighting wires in the village streets. For lighting purposes, the village is a separate political district from the town. It seems clear, therefore, that the corporate rights of the Lawrence Company do not extend into the village of Bronxville. While this objection is technical, still it is impossible to find any propriety in the Commission granting a certificate that public convenience and necessity require the exercise by a lighting corporation of a franchise in a political division of the state which is not included in the territory described in its certificate of incorporation. Such a proceeding would seem to have no warrant in law. This objection can be overcome, however, by the petitioner amending its certificate of incorporation so as to include the village of Bronxville; and in order that this controversy may be finally disposed of, we are inclined to consider the application on its merits at this time with the same effect as though that had been done, provided the petitioner desires to so amend its certificate.

It is clear that the adjudication of October 9, 1917, contemplated that the Westchester Company should be fully protected in the public and general commercial lighting of the village, and that the Lawrence Company should be allowed to continue such lighting as it was then conducting, and with that disposition of the matter we are in full accord. The use of the permit in question will not in any way alter the adjustment thus made because it simply furnishes a more convenient way, both from the view of the company and that of the public, of conducting electric current to the Colonial Building and the Brick Row than is afforded by the two

wires crossing Pondfield Road, the permit being limited to these purposes. The village authorities have expressed their preference for this method of transmission.

An order will be entered denying the petition and directing the petitioner to discontinue operating under the permit described in the petition, unless within thirty days the petitioner files with the Commission evidence that it has duly amended its certificate of incorporation by including the village of Bronxville in the towns, villages, cities, and counties in which its operations are to be carried on, and providing that in case of such filing within thirty days the approval prayed for will be granted.

Commissioners Irvine, Barhite, and Fennell concur.

In the Matter of the Complaint of M. TANENBAUM *against* A. S. BURLESON, POSTMASTER GENERAL, and NEW YORK TELEPHONE COMPANY as to charge for restoration of telephone service at complainant's residence, No. 31 West 75th street, New York city, N. Y. [Case No. 6654.]

Complaint of ARTHUR SELIG *against* A. S. BURLESON, POSTMASTER GENERAL, and NEW YORK TELEPHONE COMPANY as to charge for installation of telephone service at complainant's residence, No. 100 Morningside Drive, New York city, N. Y. [Case No. 6655.]

Complaint of H. H. BOYD *against* A. S. BURLESON, POSTMASTER GENERAL, and NEW YORK TELEPHONE COMPANY as to charge for installation of telephone service at his residence in Greatkills, Richmond Borough, New York city, N. Y. [Case No. 6656.]

Complaint of B. ECKSTEIN *against* A. S. BURLESON, POSTMASTER GENERAL, and NEW YORK TELEPHONE COMPANY as to charge for installation of telephone service at complainant's store, West Fordham Road, New York city, N. Y. [Case No. 6657.]

Complaint of HENRY A. RUBINO *against* A. S. BURLESON, POSTMASTER GENERAL, and NEW YORK TELEPHONE COMPANY as to charge for restoration of telephone service at complainant's residence, No. 39 Eighth avenue, Brooklyn, N. Y. [Case No. 6658.]

Complaint of MRS. A. M. WHITE of Buffalo *against* A. S. BURLESON, POSTMASTER GENERAL, and NEW YORK TELEPHONE COMPANY as to installation charge for telephone. [Case No. 6674.]

Correspondence Complaint of SAMUEL A. COHEN.

Correspondence Complaint of JOSEPH HOFFMAN.

Pending settlement of the question in the courts, the Commission does not feel justified in conceding to the Postmaster General power over intrastate telephone rates or service by virtue of the joint resolu-

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tion of Congress and the proclamation of the President of July 22, 1918, under which he assumed possession and control of the telegraph and telephone systems of the country.

Decided January 30, 1919.

Appearances:

W. N. Seligsberg, 55 Liberty street, New York city, and *Moses Tanenbaum*, 170 Broadway, New York city, for the complainant in case No. 6654.

Arthur Selig, 100 Morningside Drive, New York city, complainant in case No. 6655.

Henry A. Rubino, 50 Broad street, New York city, complainant in case No. 6658.

John L. Swayze and *Frankland Briggs*, 15 Dey street, New York city, for the respondent.

Samuel A. Cohen, 156 Fifth avenue, New York city, and *Joseph Hoffman*, 563 Fifth street, Brooklyn, for complainants in the correspondence complaints.

HILL, Chairman:

These complaints are against various charges and refusals of service growing out of the so called Installation Charge Order No. 1931, issued by the Postmaster General on August 28, 1918, and put into effect by the New York Telephone Company on September 1, 1918. On July 22, 1918, the President of the United States had, by his proclamation of that date, taken possession and assumed the "supervision, possession, control, and operation" of "each and every telegraph and telephone system and every part thereof within the jurisdiction of the United States, including all equipment thereof and appurtenances thereto whatsoever, and all materials and supplies"; and had directed that such supervision, possession, control, and operation should be exercised through the Postmaster General, Albert S. Burleson. The New York Telephone Company, respondent, was at the time a domestic corporation of the State of New York oper-

ating in the city of New York, and came within the effect of the proclamation.

Under the provisions of the Public Service Commissions Law of the State of New York, the respondent could not lawfully initiate the charges in question except by filing with the Commission a tariff setting them forth with particularity and stating an effective date for the same not earlier than thirty days from the filing; such tariff charges would thereupon become subject to complaint and to investigation and determination by the Commission. The company did not file any such tariff, and justifies under the action of the Postmaster General, alleging that he has taken possession and control of its lines and system and that the charges and refusals of service alleged in the various complaints were made in accordance with the provisions and terms of said Order No. 1931, which reads as follows:

Owing to the necessity for conserving labor and material and to eliminate a cost which is now borne by the permanent user of the telephone, a readiness to serve or installation charge will be made on and after September 1, 1918, for all new installations; also a charge for all changes in location of telephones.

Installation charges to be as follows:

Where the rate is \$2 a month or less.....	\$5
Where the rate is more than \$2 but not exceeding \$4 a month....	\$10
Where the rate is more than \$4 a month.....	\$15

The moving charge to the subscriber will be the actual cost of labor and material necessary for making the change.

In accordance with Bulletin No. 2, issued by me August 1, 1918, stating that "until further notice the telegraph and telephone companies shall continue operation in the ordinary course of business through regular channels," in all cases where rate adjustments are pending or immediately necessary, they should be taken up by the company involved through the usual channels and action obtained wherever possible. In all cases, however, where rates are changed, such changes should be submitted to me for approval before being placed in effect.

It will be noted that the nature of the services affected by this order is purely local and can have no interstate character whatever. The Postmaster General was made a

party to the complaints but did not appear. That official has ignored the jurisdiction of the Commission and is proceeding on the assumption that his possession and control under the President's proclamation have the legal effect of abolishing and excluding the jurisdiction of the Commission, which was conferred by state laws. If this is the effect of the President's action, the Commission is without power to entertain the complaints and they must be dismissed. If, on the other hand, the jurisdiction of the Commission over the charges and refusals in question has survived, then the complaints must be sustained because the charges in question have not been legally initiated and are therefore unlawful. The war is now over, and it is apparent that this purely legal question must be met and settled by the courts in order that the respective federal and state authorities may know the limits of their power and that the public as well as the telephone companies may know where the control of rates legally rests.

This same question has been presented through the action of the Postmaster General in assuming to put into effect as of January 21st increased toll rates affecting generally the wire lines of the entire country and including both intrastate and interstate communication. Various state commissions, including this Commission, are taking proceedings in the courts to contest the power of the Postmaster General to initiate such rates as to intrastate business. Pending the decision of this question, this Commission will not feel justified in conceding to the Postmaster General any power over intrastate rates or service. That is its position with regard to these complaints, which are accordingly sustained, and orders will be entered to that effect.

Commissioners Irvine, Barhite, and Fennell concur.

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of the TRUSTEES OF THE INCORPORATED VILLAGE OF BOLIVAR, Allegany county, *against* EMPIRE GAS AND FUEL COMPANY, LTD., as to proposed increase in price of natural gas furnished customers. Also Supplemental Complaint. Also Complaint of Company under sections 71 and 72, Public Service Commissions Law, as to price. [Case No. 6308.]

1. On complaint against advanced rates on natural gas, the complainant called as witnesses two officers of the corporation and then asked the Commission to make such investigation as it could of the affairs of the corporation. As a result of such investigation it was found that the existing rates were justified, but in the circumstances under which the investigation was made the Commission declined to commit itself for the purpose of other cases to the approximate valuation of the company's property made in this case.

2. A return of 9.6 per cent can not be adjudged unreasonable in the case of a natural gas company drawing constantly upon an exhaustible and irreplaceable supply.

Decided February 6, 1919.

Appearances:

A. J. Matson, Bolivar, N. Y., as attorney for complainants.

Frank B. Church, Wellsville, N. Y., and W. T. Bliss, Bolivar, N. Y., as attorneys for respondent.

John K. Ward, City Attorney, City of Olean.

IRVINE, Commissioner:

The Board of Trustees of the Village of Bolivar filed this complaint, alleging that a proposed new schedule of rates for natural gas within that village is too high and asking that a fair and equitable rate be fixed. The rate complained against is forty cents per thousand cubic feet, with a discount of three cents for prompt payment. The respondent operates

in a number of cities and villages in Allegany and Steuben counties. Bolivar is in what is known as the Bolivar division, which is physically separate from the company's other properties. The figures submitted are confined to the Bolivar division, and its distinct physical character, with practically complete separation of operations, renders it unnecessary to consider any other part of the territory. At the hearing the complainant examined two officers of the company, and then, for lack of instrumentalities for making an independent investigation on its own behalf, requested the Commission to make such investigation as it properly could, and to base its decision on the record thus established. The village claims that the Village of Bolivar should be considered alone, as that village is nearer the principal points of production than Cuba and other points served within the Bolivar district. It is wholly impracticable to reach any accurate determination of the investment and expenses affecting Bolivar alone. While the transmission lines to Bolivar are shorter than to Cuba, Cuba is the larger place, and the consumption there is so much greater that it is safer to consider that fact as offsetting the greater expense of transmission than it would be to make a series of assumptions necessary to separate the Bolivar village operation.

The company submitted what it termed a statement of property showing a total of \$172,113.45. This turns out to be a strictly bare bones value of items of tangible property. A checking of the inventory by the Commission's experts and the application thereto of estimated costs when the property was installed indicates a value of \$273,981.17. This includes allowances for certain general expenses but not for all items, and allows nothing for depreciation.

The estimated revenue for 1918, on the basis of the new rate of thirty-seven cents net, amounts to \$59,617.97. Of this, \$56,545.53 represents the estimate of revenue for gas sold private consumers, assuming the amount to be the same as for 1917. The other items of revenue are from street

lighting, flat-rate sales in the field, and miscellaneous rents: items estimated to be the same in the two years.

In ascertaining the expenses the Commission is practically confined to an analysis of the company's reports. Some criticism is made of the apportionment of 60 per cent of the salary of the treasurer of the company, who has charge of the Bolivar division, to natural gas expenses. The company also produces oil: \$3000 is charged to gas and \$2000 to oil. From such information as the Commission is enabled to procure it is not prepared to question either the total amount or the apportionment. An item of \$111.32 for legal expenses has been deducted. The company includes \$5160 for general amortization. This is 3 per cent of its bare bones value of \$172,113.45. Applying varying percentages to different kinds of tangible property, the Commission's experts reach a considerably higher result, to wit \$9931.21. It may be well to formulate estimated income accounts: one based upon the company's figures, the other based upon the Commission's estimates. They are as follows:

	<i>Company's statement, 1917</i>	<i>Revised esti- mates, Com- mission's engineer</i>
Revenue:		
Actual sales and incidental revenue.	\$54,519.74	
Additional revenue with 87c rate, assuming same quantity of gas sold.		\$5,100.00
Estimated annual revenue with 37c rate.		\$59,617.97
Expenses and taxes:		
Production.	\$23,134.75	\$23,134.75
Transmission.	1,205.71	1,205.71
Distribution.	1,842.55	1,842.55
Commercial.	2,372.64	2,372.64
General and miscellaneous.	10,970.77	\$10,970.77
Less "Legal expense" not allowed.		111.32
		\$10,859.45
Plus additional amortization		4,771.21
		\$15,630.66
Taxes.	3,301.35	15,630.66
Interest on consumers' deposits.	270.21	3,301.35
Total expenses and taxes.	\$48,097.98	\$47,487.66
Net operating income.	\$11,421.76	\$12,130.31

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Investment in plant and equipment:		
Depreciated or junk value of tangible property plus \$50,000 for "Gas Rights".	\$172, 118.45	
Direct cost of property in place, at estimated unit prices at time of installation without any allowance for "Overhead" and with no deduction for depreciation.....		\$273, 981.17
Rate of return on above.....	6.6%	4.4%
Net income, using company's figures except that \$5100 is added for probable revenue from increased rates.....	\$16, 521.56	
Rate of return on \$172,118.45..	9.6%	

* Actual footing; the total in the statement submitted is \$149.80 more, apparently by a mathematical or clerical error.

The rate of return as indicated by the estimates of the Commission's engineers on the basis of the new rates, 4.4 per cent, is certainly less than an adequate return. The rate based on the figures supplied by the company is 9.6 per cent. It must be borne in mind that in the case of natural gas every dollar of revenue is reached by the consumption of an exhaustible and irreplaceable commodity. The situation is as if the corporation were deriving its revenue from a gradual withdrawal of fixed capital. In these circumstances a return of 9.6 per cent can not be adjudged unreasonably high. As a matter of fact, however, the estimate is in all probability high, and that of the Commission's engineers more nearly the correct figure, although in the circumstances under which the investigation was necessarily conducted the Commission does not for the purpose of future investigations commit itself to the accuracy of either estimate.

Under the decision of the Court of Appeals in *People v. Public Service Commission*, 215 N. Y. 241, the burden of proof is on the complainant to show that the rates are unreasonable. The burden is not shifted by the fact that the Commission undertook the investigation at the request of the complainant and from its own sources of information. The burden has not been satisfied and the complaint must be dismissed.

Chairman Hill and Commissioners Barhite and Fennell concur.

In the Matter of the Complaint of LA BASTILE LODGE No. 494, I. O. O. F., *against* MIDDLEBURGH AND SCHOHARIE ELECTRIC LIGHT, HEAT AND POWER COMPANY. [Case No. 6704.]

1. A service classification of a lighting company which provides a flat rate of "two cents per night per 25-watt lamp actually in use every night; proportionate charge for those not in use every night," is so loose and indefinite as to afford no reasonable method of accounting between the company and the customer, and must either be abolished or superseded by a classification upon which the charge can be definitely fixed and easily verified by the consumer.

2. While the Commission does not feel justified in absolutely prohibiting flat rates, its experience is that they are extremely objectionable and promote constant friction between the furnisher and the consumer of the service.

Decided January 28, 1919.

Appearances:

F. Walter Bliss, Middleburgh, N. Y., as attorney for complainant; and *Cornelius VanVoras* and *Herman Herman* as Trustees of La Bastile Lodge.

Daniel D. Frisbie, Middleburgh, N. Y., as President of the respondent.

BY THE COMMISSION:

Complaint is made that respondent declines to install a meter in complainant's lodge room, on the ground that it is not obliged by the terms of its established tariff to install meters except in residences.

Examination of the respondent's general schedule for electric lighting on file with the Commission discloses that meter rates are to apply to residences only, and service classification No. 2 provides a flat rate on all other lighting. The basis of this flat rate is "2 cents per night per 25-watt lamp actually in use every night"; "Proportionate charge for those not in use every night".

This flat-rate classification is so loose and indefinite as to afford no reasonable method of accounting between the company and the customer. It can not be possible for the company to ascertain what lamps are actually used every night and thus make its proportionate charge for those not in use every night; nor is there any guide furnished as to the basis of the proportionate charge for lamps not in use every night. This classification leaves the determination of the amount of the consumer's bill altogether in the hands of the company without any way being provided for the consumer to check its correctness. In fact, there is no basis upon which anyone can determine the fairness of the charge made. The company is therefore directed to amend forthwith this service classification No. 2, by either entirely abolishing the flat rate and substituting meters for all service, or else introducing a rate upon which the charge can be definitely fixed and easily verified by the consumer. Any rate which may be established by the company is of course subject to complaint, and if complained of must stand the test of justice and reasonableness. It may be said that the creation of a flat rate reasonably just to all consumers is a task of no small difficulty.

This complaint is typical of the numerous complaints received from all parts of the State against flat rates wherever the flat rate is still used and has not been superseded by the much more reasonable and desirable meter rate; and while the Commission does not feel justified in absolutely prohibiting flat rates, its experience is that they are extremely objectionable and promote constant friction between the furnisher and the consumer of the service.

In the Matter of the Complaint under sections 71 and 72, Public Service Commission Law, of the MAYOR OF THE CITY OF AMSTERDAM against CHUCTANUNDA GAS LIGHT COMPANY as to prices proposed to be charged the public in said city. [Case No. 6571.]

While 8 per cent return on investment is permissible and proper under the mandate of the statute proscribing a just and reasonable return, the Commission does not feel justified in accepting the present inflated prices as a basis for rate-making. Under the facts in this case, an increased rate for gas from \$1.25 to \$1.35 per thousand cubic feet, estimated to yield a return of 4.35 per cent on investment, was held to be reasonable.

Decided January 30, 1919.

Appearances:

C. J. Heffernan, Corporation Counsel, for the City of Amsterdam.

W. H. Hart, Secretary, for the Amsterdam Board of Trade.

A. R. Conover, Amsterdam, N. Y., for respondent.

O. A. Merchant, Amsterdam, N. Y., General Manager of Chuctanunda Gas Light Company.

HILL, Chairman:

This is a complaint by the Mayor on behalf of the City of Amsterdam against a new schedule of gas rates proposed to be charged by the respondent for illuminating gas in the city of Amsterdam. The rates in effect at the time this increase was initiated were \$1.25 per M for quantities up to 5000 cubic feet; \$1.20 per M for consumption between 5000 and 10,000 cubic feet; \$1.15 per M for consumption between 10,000 and 20,000 cubic feet; \$1.05 per M for consumption in excess of 20,000 cubic feet: with a discount of 10 cents per M for prompt payment. There was a minimum monthly charge of 25 cents per meter installation. The proposed rates under consideration create an advance of 20 cents per

M, with the same discount, and increase the minimum monthly charge from 25 to 50 cents per meter installation.

The records of the Commission show that the books and records of this company were examined by the division of capitalization, from the organization of the company to December 31, 1914, incident to capitalization case No. 4808. Complete details were available from January 1, 1909, to December 31, 1914, but not for the period prior thereto. The balance in the fixed capital account of the company at December 31, 1908, was \$232,810.95, and to support this the company had an allocation made which identified the various items of property and showed the values thereof. This appraisal was inquired into by the division of capitalization with the aid of such collateral records, such as minute books, contracts, etc., as could be found, and it was found to be substantially correct except for some transfers between accounts.

Subsequent to this examination the entire matter was turned over to the Commission's engineer, who advised in his report dated May 12, 1915, that "The appraisal made by the company as of December 31, 1908, is conservative, and I have adopted it". As a result of this, the appraisal, or allocation, supplemented by the actual costs after December 31, 1908, was adopted by the Commission for use in that capitalization case and placed upon the books of the company.

Apparently the company has been keeping its accounts since that time in accordance with the Commission's requirements, and there appears no reason to doubt its statement that it had as of June 30, 1918, a fixed capital of \$350,291.87, and an accrued amortization of \$56,948.15. Disregarding the company's small investment in canal bonds, we thus have the following:

Fixed capital	\$350,291.87	
Current assets	28,196.96	
Materials and supplies.....	35,078.13	
		\$408,566.96
Less accrued amortization.....	\$56,948.15	
Current liabilities	27,631.71	
		84,579.86
Leaving as investment as of June 30, 1918.....		\$323,987.10

In the absence of any evidence tending to challenge this investment, and in view of the facts above stated, it seems proper to accept the amount mentioned as a basis upon which to compute the return on investment. Respondent's Exhibit No. 1 indicates that its net earnings on investment were about 6 per cent in 1915, 7 per cent in 1916, 1.3 per cent in 1917, and that at the new rates the return for a full year on the present level of operating costs will be about 7.7 per cent. These results are attributable to the sensational increases in labor and materials which have been encountered during the war period and especially during the last six months, and which are the subject of universal knowledge. Thus the price of coal at the plant, which was \$2.97 per ton in 1915, increased to \$6.06 in 1917, and is now about \$5.32. The price of gas oil, which is a large factor in the manufacture of gas, has increased from .036 per gallon in 1915 to about 10 cents at the present time. Wages have about doubled in the same period, and office salaries have increased approximately 70 per cent. It appears that the cost of manufacture in 1915 was about 75 cents per thousand, as compared with the cost in 1918 of \$1.075 per thousand.

There is no doubt that the company is entitled to and must have an increase, and the main question to be determined is how much that increase should be. It has become generally recognized that a return of 8 per cent on investment is permissible and proper under the mandate of the statute prescribing a just and reasonable return; but it is also recognized that the cost increases above enumerated, which prevail generally over the country, are due not to natural conditions but to the unusual upheaval of business brought about by the great war. The war is now over, and we think it is fair to assume and naturally to be expected that there will be a readjustment in economic conditions which may and should make its advent with considerable rapidity. We are warned of course that this may not happen, but the Commission does not feel justified in accepting the

present inflated prices as a basis for rate-making. The attitude taken by nearly all public service commissions is that the public utility corporations are not immune from the effect of the conditions referred to which have seriously disturbed general business, and that they must expect to participate in a reasonable measure in the difficulties which all business is compelled to face. The rates which are now being superseded were put into effect within the past year and constituted an increase of about 15 per cent upon the prices theretofore charged.

There will be some increase in income, which it is impossible to estimate with exactness, from the advance in the minimum rate from 25 to 50 cents. If the increase per thousand feet now to be permitted should be limited to 10 cents instead of being allowed at 20 cents as proposed by the respondent, an estimated result of the outcome will be as follows:

Net income from sales of gas and from jobbing business for first 6 months of 1918.....	\$2,587.84
Net yearly income at same rate.....	\$5,175.68
Increase: income at 10 cents per M on 99,082,000 cubic feet...	9,908.20
Net income at increase of 10 cents per M.....	\$15,083.88

which equals 4.35 per cent on investment as of June 30, 1918, in addition to which there will be some increased return from the advanced minimum charge.

All things considered, we think this fairly meets the existing situation, at least as a temporary disposition, which will enable the company to avoid financial difficulty and give some return during the trying period which the business of the country is being compelled to face. What the future will develop we can not foresee, and it is best not to attempt to anticipate. An order will be entered canceling the tariff which has been filed, and allowing the company to put into effect on one day's notice a new tariff in conformity with the views above expressed. Such tariff will remain in force until six months after a declaration of peace, or until the further order of the Commission.

Commissioners Irvine, Barhite, and Fennell concur.

In the Matter of the Complaint of the VILLAGE OF GRANVILLE, Washington county, *against* THE DELAWARE AND HUDSON COMPANY, asking that a new passenger and freight station building be provided; and UNITED STATES RAILROAD ADMINISTRATION. [Case No. 4494.]

An examination of the Federal Control Act discloses that whether or not Congress has the power to dispossess state authorities of the police powers vested in them, it has expressly refrained from using such power.

The regulation of passenger and freight facilities at stations does not in any substantial way affect the interstate features of traffic and is well within the police powers of the several States.

Decided February 11, 1919.

Appearances:

C. E. Parker, Granville, N. Y., as attorney for the Village of Granville.

Lewis E. Carr, *John E. MacLean*, and *N. R. Cass*, Albany, N. Y., as attorneys for The Delaware and Hudson Company.

M. D. Whedon, Granville, N. Y., in person.

HILL, Chairman:

On September 11, 1914, the Village of Granville filed a complaint, pursuant to the provisions of section 50 of the Public Service Commissions Law, praying that the defendant, The Delaware and Hudson Company, be required to make certain improvements to its passenger and freight facilities in that village for the greater accommodation and convenience of the public. Issue was joined, hearings had, evidence taken, and an inspection of the existing facilities made by the Commission. At the close of the evidence the defendant admitted that its facilities were inadequate and agreed to improve them substantially in compliance with the prayer of the petition; and it was thereupon agreed in open

commission, that inasmuch as a preliminary purchase of property by the defendant was necessary, which would consume some time, no formal order directing the improvements would be made at that time, but that the Commission and the complainant would accept the assurance of the defendant that the improvements would be carried out with all convenient speed, the proceeding before the Commission remaining open. Part of the improvements related to alterations to the passenger station and these were proceeded with. Another part related to changing the location of the freight terminal tracks and these were not prosecuted, with the result that the complaint before the Commission was opened and proceeded with and a hearing held on August 21, 1918. At this hearing counsel for the defendant stated that its railroad had been taken over by the Federal Government pursuant to the acts of Congress of August 29, 1916, and March 21, 1918, and was at the time of the hearing possessed, controlled, and operated by the United States Railroad Administration pursuant to said acts of Congress, that the revenues of the company were being received and expended by the Federal Government, thus depriving defendant of the financial ability to comply with any order which the Commission might make. Counsel for defendant thereupon stated:

The matter of putting in this other was of course part of what was contemplated at that time, what was agreed to by Mr. Sims. There is an entire willingness on the part of the company to do that, provided we can get authority to do that, but that authority don't exist in us. . . .

I am not here objecting to this going on, provided we are in a position where we can go on, but that we can not do without the authority of the Director General. He is in control. I am entirely willing to make an application to the Director General, and if he says no, why we can't; if he says yes, we can. . . .

Chairman Hill: . . . We will . . . adjourn this proceeding for two or three weeks, and in the meantime counsel can apply to the Director General; and the Commission may see fit also to communicate with the Director General.

Counsel: All right, we are entirely willing that should be done.

Whereupon the hearing was adjourned, upon the assurance of said counsel that the defendant company would immediately request authority of the United States Railroad Administration to proceed with the promised improvements and that they would be made provided such authority could be obtained.

The general manager of defendant, who was also acting as an assistant to the Federal Director General in the operation of defendant's railroad, instead of carrying out this agreement, urged the Director General to disapprove of the improvements and defer them indefinitely, with which recommendation the latter official complied.

Later, the United States Railroad Administration was made a party defendant, and informed that the Commission would be pleased to hear it as to any alleged change in the facts which might have a bearing on the propriety of the original arrangement being adhered to, but this invitation was not accepted.

The cost of the improvements in question is estimated to be between \$5000 and \$10,000, and the Commission is strongly of the opinion that they should be made as soon as possible consistently with their nature.

It becomes necessary, however, to consider, in the light of the federal action with regard to defendant's property, whether or not an order by the Commission directing defendant to make the improvements in question is within its power, and if so, whether such an order is appropriate in view of the desire of the Commission to act in coöperation with the federal authorities.

As stated by this Commission in *Shippers Himrod v. Penn. R. R. Co.*, decided November 27, 1918, it is not necessary to determine whether the President derives his authority over the railroads by reason of his being Commander in Chief of the Army and Navy, under the Constitution, or through the acts of Congress above mentioned, for the reason that as matter of fact he has taken over their possession, control, and

operation pursuant to the latter authority. An examination of the statutes in question discloses that whether or not Congress has the power to dispossess the state authorities of the police powers vested in them, it has expressly refrained from using such power.

It seems clear that the regulation of the passenger and freight facilities at stations does not in any substantial way affect the interstate features of traffic and is well within the police powers of the several States. Indeed, the Director General has recognized that this power remains unimpaired in the Commission in several proceedings now pending before it.

It may be said that the Director General having assumed the operation and taken over the income of the company's property, the railroad is without the funds to make the necessary expenditure. I think it is a serious question, however, whether, to the extent that the railroad company is still subject to the jurisdiction of the Commission, the federal power can by any act oust and exclude the state authorities from an effective jurisdiction by withholding from the railroad company the funds which it may require to enable it to comply with the lawful mandates of those authorities. However that may be, the company should call upon the Director General for the funds which it may need to expend in compliance with the order which the Commission will make in this proceeding, and it seems unlikely that the federal authorities will decline to comply with such requisition. Should such request be made and denied, the respondent will then be heard on the question of its financial ability to comply with the order which will be made herein.

An order will therefore be entered directing the railroad company to complete the improvements which were agreed upon, work to begin within thirty days and to be completed within six months.

All concur.

PETITION OF UNITED STATES RAILROAD ADMINISTRATION,
NEW YORK CENTRAL RAILROAD, under section 54, Rail-
road Law, for consent to the discontinuance of an agent at
the Solvay passenger station on the Auburn branch of said
railroad. [Case No. 6695.]

On a petition to discontinue the maintenance of a ticket agent at a passenger station, it appeared that the station had had a ticket agent for at least twenty-five years; that over three hundred tickets were sold each month and a small amount of baggage was handled; that there had been no falling off in passenger business but that the cause of the application was the expense of maintaining the agent. The agent is also operator for the Western Union Telegraph Company and agent for the American Railway Express Company. Under existing wage scales his pay as ticket agent is about \$140 a month, and his net income from the three positions, assuming present conditions to continue during the year, something over \$5200.

Held, That the remedy was to reduce the compensation rather than to cut it off altogether and deprive the public of the service to which it had long been accustomed and to which it is reasonably entitled.

Decided February 13, 1919.

Appearances:

Hiscock, Doherty, Williams & Cowie (by Mr. Williams),
Syracuse, N. Y., as attorneys for applicant.

Lamont Stillwell, Syracuse, N. Y., as attorney for the
Village of Solvay, N. Y.

W. A. Mackenzie, 821 Onondaga County Savings Bank
Building, Syracuse, N. Y., as attorney for the Halcomb Steel
Company.

Bond & Schoeneck (by Mr. Bond), Union Building, Syra-
cuse, N. Y., as attorneys for Pass & Seymour, Incorporated.

W. J. McGee, traffic manager, for Hammond Steel Com-
pany of Solvay, N. Y.

IRVINE, Commissioner:

The petitioner, the Director General of Railroads, asks
permission to discontinue the maintenance of a ticket agent

at the Solvay station of the New York Central railroad. Solvay has been a passenger station with an agent since 1894, and possibly for a longer period. The growth of large industries has greatly increased the population and the general business. It has now about six thousand inhabitants, with perhaps fifteen hundred or two thousand in adjacent territory and normally using Solvay facilities. It is on what is known as the Auburn road, for many years a branch line. It is something over three miles west of Syracuse. The freight business, because of the large industries in the neighborhood, is very heavy, but is handled from another station and by another agent. There is at this time very little passenger business between Solvay and Syracuse as there is a trolley line with frequent service and a six cent fare, as against the service on the New York Central where, taking both directions, seven trains stop regularly and two stop on signal, and the fare is twelve cents. The average ticket sales for eleven months in 1918 was 333 tickets per month, and the average revenue from such ticket sales was \$190 per month. There is some commutation business between Solvay and near points to the west, chiefly Camillus. The number of commuters between Camillus and Solvay was stated to be five or six. It would seem that on an average something more than one piece of baggage is handled per day. Tickets can be purchased and baggage checked between Solvay and points on the New York Central from New York city to Buffalo and Niagara Falls. Baggage for other destinations must be checked in Syracuse where through tickets are bought; or else, if a passenger has secured a through ticket from Syracuse he may check directly from Solvay. This represents about the extent of the passenger business. The agent whose services it is desired to dispense with sells tickets and handles baggage and milk, of which there is a very limited amount, all for the railroad company. He is also an operator for the Western Union Telegraph Company, and agent of the American Railway Express Com-

pany. According to his testimony, he receives in the neighborhood of \$60 or \$70 a year for his services as telegraph operator: 10 per cent of his receipts. This seems small if the statement made on behalf of one industry as to the amount of its telegraph business is nearly accurate. However, for present purposes we will accept the figure of \$60 per year. He received 8 per cent commission on express business, and his revenue from that source in 1918 was \$5990. He formerly received from the railroad company for his services as ticket agent \$65 a month. The Railroad Administration has installed a new scale of wages, retroactive to October 1, 1918, and considering the hours of employment as shown by the testimony his compensation as ticket agent under the new scale will be about \$140 per month or \$1680 a year. This gives him a revenue in the three positions, all now under one form or another of government control or operation, of \$7730 a year. He testifies that he pays a girl \$12 a week to keep books. This is \$624 a year. He also testifies that he always has one man at \$23 a week to help him, and another man five or six months in the year. Assuming that he has a second man for the entire six months, it means that he pays for extra labor \$2418. In addition, he states that there is an expense of approximately \$48 a year for telephone service which he must pay. This gives him a net income of \$5264, assuming that the express business remains at its 1918 figure and that he requires as much help as he required in 1918. It is conceded that the demand for passenger accommodations has not fallen off, and that the prevailing reason for the petition is to get rid of the wage charge of \$1680 a year.

Concededly, the agent's services to the railroad company occupy only a portion of his time, presumably a small portion of the time he is actually on duty. It does not appear that his hours of service are in any way increased by reason of his railroad duties; in fact, his testimony indicates that the express work requires him to remain on duty longer than

would be required by his services to the railroad company. The compensations referred to, if not fixed by the Government, are within its control. It is inferable that they are fixed in carrying out the extremely popular policy of standardizing everything. When this policy of standardization entails this very large expense, the remedy seems to be to revise the policy and reduce the compensation rather than to cut off the compensation altogether and so deprive the public of service to which it has long been accustomed and to which it is reasonably entitled. The petition will be denied.

All concur.

In the Matter of the Petition or Complaint of INTERNATIONAL RAILWAY COMPANY under subdivision 1, section 49, Public Service Commissions Law, for permission to increase passenger fare in the city of Lockport. [Case No. 6480.]

Decided February 20, 1919.

Appearances:

Cohn, Chorman & Franchot (by Edward F. Franchot), 430 Gluck Building, Niagara Falls, N. Y., as attorneys for International Railway Company.

William A. Gold, Corporation Counsel, for the City of Lockport, N. Y., and the following city officials: *William J. Gold*, Mayor; Aldermen *George W. Grant*, *Charles E. Carnell*, *John M. Hoenig*, *Wm. B. LeValley*, and *Leo M. Rhulman*.

HILL, Chairman:

This is a petition by the International Railway Company, under section 49 of the Public Service Commissions Law, for permission to increase its passenger fare in the city of Lockport from five cents to six cents.

The petitioner is a street railway corporation which owns and operates a system of electric railway which includes urban systems in the cities of Buffalo, Niagara Falls, and Lockport, interconnecting with interurban systems. The mileage of track in the city of Lockport is about eleven miles, and is included in what is known as the Lockport division, which comprises the Buffalo and Lockport and the Lockport and Olcott lines and the Lockport local line. The Lockport and Olcott interurban cars go through Lockport over certain of the city tracks, thence to Olcott. The interurban cars from Buffalo enter Lockport over private right of way which reaches a terminal within the city, transferring local passengers to the local lines. Freight

business also is done on this line. A certain local freight business is done on city tracks, partly on streets and partly on private right of way. The interurban cars of an independent company, called the Buffalo, Lockport and Rochester Railway Company, also pass through Lockport over certain tracks of the local system under a traffic agreement by the terms of which it pays a track rental based on car mileage, retaining all fares earned by its cars.

The petitioner has presented its case upon the theory that traffic over private right of way within the city not being carried over tracks in city streets is not affected by the proceeding; and that the Lockport portion of the Buffalo and Lockport line, being entirely on private right of way, its operations are not to be considered. We think this basis is erroneous, and that all of the passenger operations within the city of Lockport should be considered, whether on public streets or private right of way, and whether of an urban or interurban character. However, I think sufficient evidence has been presented to allow of a fair determination on the merits, the margin for error being extremely broad, as will hereafter appear.

Referring to the evidence, we find a gross earning of \$5600 from local freight traffic. The petitioner has eliminated from the operating expenses all costs relating to this traffic, including all maintenance of way and structures relating to that part of the track used therein, and we need therefore give no further attention to that item. In presenting its proof, petitioner gave no evidence bearing upon valuation, on the theory that the increased fare asked for if granted would all be absorbed in operating expenses and that therefore it would be unnecessary to consider any requirement of income for return on investment.

The revenues have been arrived at in the following manner: All fares received on cars operated wholly within the city are credited in full. Fares received from passengers paying local fares and transferred to interurban cars leaving

the city are credited in full, while two and one-half cents is credited the local line for each passenger transferred to it from the interurban cars. Fares received for local rides on the Olcott interurban cars are also credited in full to the local lines. Another item of income consists of \$5240.28 rental received from the Buffalo, Lockport and Rochester Railway Company for use of that part of the city track in city streets used by those cars and constituting about one-half of the entire track used by them. As above stated, we think a more correct allocation of revenue and operating expense as between local and interurban traffic would include a credit to the city lines for each passenger carried in interurban cars on city tracks, offset by a charge to operation which would represent the cost of the operation of such cars on the city tracks, including an allocated proportion of overhead cost. This has not been done, but the petitioner, in order to make a showing which it claims is more favorable to the city system than that above suggested, has credited to the city lines *in toto*, in addition to the total earnings of local cars, all local fares received on the Olcott interurban cars, two and one-half cents for each passenger accepted on a local car as a transfer from an interurban car, and has excluded from the operating expenses all power, platform, and other costs pertaining to interurban cars except their proportion of the maintenance of right of way and structures with respect to that part of the city tracks laid in streets over which they operate. The allocation of power costs as between the local and interurban cars takes into account the lesser power demand of the smaller cars. The question arises whether, as to the Buffalo and Lockport interurban cars, an allocation of revenue and expense which would assign to the Lockport local lines the earnings of the two miles of the Buffalo and Lockport track lying within the city lines, charging against such earnings all of the operating expenses of that portion of the road, would be more favorable to the local lines than the allocation adopted by the

company; and the same question applies to the Olcott interurban traffic. From our knowledge of the meager earnings of interurban roads generally, we think such an allocation would be less favorable; under the allocation used by the company, the local lines secure a *net* revenue from the interchange business with the Buffalo lines represented by the credit for eastbound transfers of two and one-half cents each, and by its retention of all local fares received from its own passengers transferred to the interurban cars. Furthermore, the interurban line assumes the entire operating charge for station employees. We therefore conclude that the allocation adopted by the petitioner is fully as favorable to the local lines as any basis which could be suggested. On this basis which we have decided to adopt, the operation sheet would make the following showing:

Passenger revenues (1918, actual):	
(a) Cash fares collected on Lockport city local cars.....	\$42,021.45
(b) Local 5c fares collected in Lockport city on Lockport and Olcott cars	3,181.40
	<hr/>
	\$45,152.85
(c) Transfer passengers carried on Lockport city local cars in Lockport city on transfers issued from interurban cars at 2½c per passenger.....	4,718.82
Total passenger revenue.....	\$49,868.67
Chartered car revenue.....	41.00
Advertising and other privileges.....	427.06
Rent of track from B., L. & R.....	5,240.28
	<hr/>
	\$55,575.01
Operating expenses (* actual for 1918):	
* Maintenance of way and structures.....	\$9,607.56
* Maintenance of equipment.....	8,448.17
* Operation of power plant (allocated).....	3,488.66
* Operation of cars (allocated).....	22,521.28
Add increase of wages platform men.....	6,222.48
* Accidents and damages.....	3,964.43
* General and miscellaneous expenses.....	6,096.90
* Taxes.....	5,004.46
	<hr/>
	\$65,853.94
Revenues as shown above.....	<hr/>
	55,575.01
Deficit.....	<hr/>
	\$9,778.98

The proposed increase in revenue is a theoretical addition of 20 per cent to the local fare revenue of \$45,152.85, but experience demonstrates that this theoretical increase will not be fully realized by reason of a shrinkage of traffic which will result from the increased rate. Computing the increase

at 15 per cent, we find an additional revenue of \$6772.92, and this added to present earnings will fall by \$3006.01 to yield sufficient revenue to defray the expenses of operation. These figures exclude any return on investment, and also any charge to operating expenses for depreciation. On the most moderate valuation which could be adopted the annual depreciation properly chargeable to operation would amount to several thousands of dollars, and even a low rate of return would amount to many thousands more. These inadequate results are common to street railway systems in cities of the size and population of Lockport, which are rarely self-supporting. While the Commission does not feel warranted in accepting the present greatly advanced level of operating expenses as a basis for fixing rates which are expected to be relatively permanent, the gap between revenues and even a most moderate return is so great in this case that no question seems to exist as to the propriety of granting a six cent fare.

An order will be entered accordingly, to become effective March 1, 1919, for a period of one year, and thereafter until the further order of the Commission.

All concur.

In the Matter of the Complaint of the BOARD OF SUPERVISORS OF ERIE COUNTY *against* A. S. BURLISON, POSTMASTER GENERAL, and NEW YORK TELEPHONE COMPANY as to rates. [Case No. 6703.]

The free or reduced service which telephone companies are permitted to extend to municipal corporations by virtue of subdivision 3 of section 92 of the Public Service Commissions Law, does not fall within the prohibitions against discrimination and undue advantage found in the same section.

Decided March 11, 1919.

Appearances:

Asher B. Emery, County Attorney, and *Frank A. Dorn*, Chairman Board of Supervisors, for complainant.

Paul H. Burns, 15 Dey street, New York, for respondent.

BY THE COMMISSION:

This is a complaint by the County of Erie against the action of the respondent in threatening to terminate the allowance of a reduction of 25 per cent in the compensation for the telephone service which it renders to the complainant. For many years respondent has supplied telephone service both to the City of Buffalo and the County of Erie. The charge for the service in each case was based on the company's regular schedule from which a discount of 25 per cent was allowed. The company now proposes to continue the discount to the city but discontinue it to the county. The county claims that this will result in an unlawful discrimination.

The powers of the Commission over telephone rates and the regulation of such rates are found in sections 91 and 92 of the Public Service Commissions Law. Section 91, subdivision 1, provides that all charges shall be just and reasonable and not more than allowed by law or by order of

the Commission. Subdivision 2 prohibits special rates, rebates, drawbacks, and discriminations. Subdivision 3 prohibits any undue or unreasonable advantage or prejudice to any person, corporation, or locality.

Section 92, in subdivision 1, requires all rates and charges to be shown by printed schedules to be filed with the Commission. In subdivision 2 is found a prohibition against charging rates different from those shown in the schedule on file, and a provision that no discrimination shall be practiced between patrons. Subdivision 3 prohibits free or reduced service except to officers, employees, attorneys and certain others, charitable institutions, and ministers of the gospel, but contains a special provision excepting from its application state, municipal, or federal contracts.

The question presented, therefore, is whether free or reduced service given to a municipal corporation pursuant to the exception last above mentioned comes within the prohibitions against discrimination and undue advantage found in the earlier portions of the statute. If it does, then it follows that all free and reduced service must be made the subject of the filed schedules, and must be equally extended to all patrons of the same class. Thus, if free service is given to one clerk, all other clerks are entitled to demand free service; so with the company's attorneys and other officers; so with charitable institutions; so with ministers. This would seem to be a *reductio ad absurdum*. The same question in a different form was considered by the Commission in *State Agricultural and Industrial School v. New York Telephone Co.*, 4 P. S. C. 2nd Dist. 219. There the State of New York applied for an order to compel the telephone company to connect its equipment with other equipment owned by the State, and Commissioner Irvine, writing for the Commission, said —

We do not find that the law has imposed upon telephone companies any duty with respect to service to the State other than the duty owed to other subscribers. The only difference suggested by the statute is

the provision in subdivision 3 of section 92 of the Public Service Commissions Law, that that subdivision, forbidding free service or reduced rates, shall not apply to state, municipal, or federal contracts.

If the service were such as to impose a duty upon the company to render it generally, it would be required to file schedules of rates; but it would be free, if it saw fit, to render the service to the State at a reduced rate or even gratuitously. The Commission might compel it to render service to the State under the regular tariffs. Any other arrangement would have to be by contract between the company and the State. We hold, however, that this service is not one to be enforced in favor of subscribers generally. There are, therefore, no schedules, nor will there be any. Consequently, there exists no basis of compensation upon which we could order connections made with this switchboard or other state switchboards. If such service is to be rendered to the State and not to other users of the telephone, it must be by virtue of legislation not now existing, or by virtue of a contract which this Commission has no power to make on behalf of the State.

It seems clear that the prohibitions of the statute against discrimination and undue advantage do not apply to any class of free or reduced service expressly permitted by the statute. These views call for a dismissal of the complaint, and an order will be entered accordingly.

In the Matter of the Complaint of RESIDENTS OF THE HAMLET OF PHILLIPSPOET, town of Mamakating, Sullivan county, *against* NEW YORK, ONTARIO AND WESTERN RAILWAY COMPANY as to the condition of a highway bridge, part of which is located on said company's property. [Case No. 6430.]

Where in the construction of a railroad the location of a highway and highway bridge are changed, and it is not shown that the right of way boundary lines of the railroad include or exclude the bridge, the question of responsibility for maintenance, depending on the determination of the legal question of boundary lines, is one for the Supreme Court.

Decided March 13, 1919.

Appearances:

George H. Smith, Monticello, N. Y., attorney; and *Edwin D. Knapp*, Winterton, Sullivan county, N. Y., Supervisor, for the Town of Mamakating.

C. L. Andrus, Grand Central Terminal, New York, attorney; and *J. H. Nuelle*, Middletown, N. Y., General Superintendent, for New York, Ontario and Western Railway Company.

M. B. Pierce, 50 Church street, New York city, Assistant General Solicitor, for Erie Railroad Company.

FENNELL, Commissioner:

This is a contention as to the responsibility for maintaining a highway bridge at Phillipsport, town of Mamakating, Sullivan county, N. Y. At Phillipsport a small stream runs northerly at the foot of the hills forming the eastern side of the valley. Several hundred feet westerly the main highway runs north and south. The old Delaware and Hudson canal was easterly of the main highway. A road — probably a private road originally — led from some houses at the foot of the easterly hills of the valley across the stream and over

the canal to the main highway. This road ran northerly along the foot of the slope for a short distance, then curved westerly and southwesterly across the creek, and then ran westerly across the canal. When the N. Y., O. & W. railroad was built the railway company changed the location of this road. The new road was taken directly from the foot of the eastern slope westerly to the main highway. The elevation of the track at the crossing was about ten feet above the highway, and the new and shorter distance of road required the erection of a longer and higher bridge over the stream. The railway company built a wooden bridge 45 feet long and 16 feet wide. A railroad station was placed to the east of the track a short distance south of said crossing. The new bridge and newly constructed portion of the highway made a direct, and the only, connection between the main highway, running through Phillipsport, to the railroad station of the N. Y., O. & W. This cross highway is used almost entirely as a means of access to the railroad station. This highway has been used by the public as a highway for upward of forty years, although there is no record that it has been officially laid out or accepted by the Town of Mamakating as a public highway.

Some evidence was given that about two-thirds of the bridge was within the right of way lines of the railway company, but the railway official who had charge of the property records of the company testified that the railway company had no paper title to the right of way at the location of the bridge, nor for a distance of two hundred feet northerly and about three hundred and fifty feet southerly therefrom; that the only right which he could find the company possessed within those limits was by adverse possession. Under these circumstances counsel for the railroad contends that the bridge can not be within the right of way as the easterly end of the bridge is 25 feet from the track. The west line of the right of way south of the bridge, if projected northerly parallel to the rail, would pass through the bridge and leave

two-thirds of the bridge within the railway right of way. The west line of the right of way north of the bridge, if projected southerly in a similar manner, would include all the bridge in the railway right of way. While it is probable that one or the other of these lines has been regarded as the westerly right of way line of the company, the evidence, as actually produced, would not warrant a finding to that effect.

If the railway tenure is one of adverse possession only, then of course such tenure could not include the highway bridge. It is also questionable, under such a tenure, what land at this location, outside of that occupied by the ties and ballast, belongs to the railway company.

Present section 21 of the Railroad Law provides, among other things, as follows:

Every railroad corporation which shall build its road along, across or upon . . . highway, etc., which the route of its road shall intersect or touch, shall restore . . . thus intersected or touched, to its former state, or to such state as not to have unnecessarily impaired its usefulness.

In the case of *People ex rel. Town of Colesville v. D. & H. Co.*, 177 N. Y. 337, at page 342, we find the following:

By section 13 of the Railroad Law a railroad corporation may change the grade of any part of its road as it may deem necessary to avoid accidents and to facilitate the use of the road. If the exercise of this power affects a highway crossing the case does not fall within section 62 of the Grade Crossing Law, but the obligation resting on the corporation is that prescribed by the old law, i.e. to restore the highway as far as practicable, and of such restoration the corporation must bear the expense. This duty can be enforced by mandamus and the town is a proper relator. (*People ex rel. Green v. Dutchess & Columbia R. R. Co.*, 58 N. Y. 152.) It is true that as the statute directs the highway to be carried over or under the track "as may be found most expedient," the election is with the company. (*People v. N. Y. O. & H. R. R. Co.*, 74 N. Y. 302.) But the exercise of such election is qualified by the obligation to restore the highway to its former state or to such a state as not to have unnecessarily impaired its usefulness.

The evidence herein does not warrant a finding that the bridge is in whole or in part within the railway right of way. Whatever bearing, if any, an inclusion of the bridge

within the right of way might have, it is therefore not necessary to determine herein. It would seem that in this case equity would require that the town should pay toward the replacement or maintenance of the present bridge such proportion of the cost thereof as would be measured by the reconstruction or maintenance cost of the old bridge originally across the creek before the railroad was built, and the railroad should pay the balance. This is peculiarly true in this case as the bridge is used almost entirely to get to and from the railroad station. The Commission has used its best offices and expended considerable time in an endeavor to induce the parties hereto to make such amicable arrangement between themselves as would provide safe passage for the public using this bridge. The efforts have been unavailing. This Commission has no power to determine such a question, and we can find no authority in the Public Service Commissions Law to compel reconstruction or maintenance of this bridge in this case by the N. Y., O. & W. Railway Company. Relief must be had by an action in the Supreme Court as in the case above cited to determine the relative legal rights and duties of the town and the railway company regarding this bridge.

All concur.

In the Matter of a Request of the Forest, Fish, and Game Commissioner to this Commission as to the setting fires by sparks from locomotive engines.

In the Matter of the Petition of the UNITED STATES RAILROAD ADMINISTRATION, NEW YORK CENTRAL RAILROAD, to be relieved from the order of the Commission requiring the use of Oil Burning Locomotives upon the Adirondack Division during certain months of the year. [Case No. 494.]

On an application for rescission of an order requiring the use of oil burning locomotives within the Forest Preserve during certain months of the year,

Held 1. That unless the Commission is satisfied that present devices and methods of operation afford practical security against the setting of fires by passing trains, it can not be justified in relaxing precautions because of expense entailed in observing them.

2. Notwithstanding improvements and devices to prevent the emission of cinders from smokestacks of locomotives and the dropping of embers from ash-pans, the dangers arising from possible defects in construction and maintenance and from careless operation make it inadvisable at this time to rescind or modify the order.

Decided March 20, 1919.

Appearances:

Visscher, Whalen & Austin (by Mr. Austin), Albany, N. Y., for the applicant.

Marshall McLean, Albany, N. Y., for the Conservation Commission.

Frank L. Bell, Glens Falls, for the Estate of A. A. Low, the Whitney Realty Company, Champlain Realty Company, and the International Paper Company.

PL.

IRVINE, Commissioner:

This is a second application, this time made by the United States Railroad Administration, to be relieved from the operation of an order first made by the Commission in 1908

requiring the use of oil burning locomotives operated within the Forest Preserve in the Adirondack region between the hours of 8 a. m. and 8 p. m. from April 15th to November 1st in each year. In 1914 The New York Central and Hudson River Railroad Company applied to be relieved from the order, and the application was denied. On each occasion a great deal of evidence was taken and Opinions were written, reported in 1 P. S. C. Reports, Second District, p. 652; and 4 P. S. C. Reports, Second District, p. 142. Again, on this application much evidence was taken for the purpose of determining whether sufficient progress has been made in fire protection devices to justify a rescission or modification of the order. It is unnecessary to enter into a detailed discussion of the evidence. It appears that because of the greatly increased cost of oil, the use of oil burning locomotives results in greatly increased expense. While this is an element for consideration, it can not be permitted to outweigh the damage caused by forest fires: not only the money value of the timber destroyed but the actual destruction of the forest and the forest mat. Unless, therefore, the Commission is satisfied that present devices and methods of operation afford practical security against the setting of fires by passing trains, it can not be justified in relaxing precautions because of expense entailed in observing them.

The Railroad Administration relies chiefly in support of its application upon the adoption of a new spark-arrester or "front end," which it claims removes the danger of "stack fires": that is to say, fires set by sparks emitted from the smokestack of the locomotive. This device is known as the "Mudge-Slater front end," and it is being installed on locomotives on the Adirondack division of the New York Central in lieu of the ordinary or master mechanic's front end heretofore in use. The evidence is in a sense conflicting as to the efficiency of this device, but the apparent conflict is largely eliminated when it is learned that upon a road in another State where the device has been in use and where stack fires have occurred in spite thereof, the netting or mesh for the

arrest of cinders and embers is very different in character from that employed on the New York Central, and even to the lay mind obviously less efficient. We are satisfied from the evidence, and from an inspection made by engineers of the Commission, that with the Mudge-Slater device, properly constructed and carefully maintained, there would be little danger of stack fires. The conditions as to proper construction and careful maintenance present a serious problem.

The New York Central has also adopted a new form of ash-pan, of cast steel construction, and certainly better calculated to prevent the dropping of embers than the ash-pan formerly in use. Here, again, the elements of proper construction and careful maintenance present themselves, with the additional danger that the hopper may be opened *en route* and embers dropped from an ash-pan in good condition. The applicant offers to safeguard against this danger by locking the hoppers at the beginning of the run and keeping them locked until its close. This would largely eliminate this particular danger, but again the human element enters in; and besides, there may be occasions of emergency when it would become necessary to release the hopper.

It is known to be the practice of some firemen on occasions to remove a clinker or piece of brick from the firebox and throw it off alongside the track. The applicant considered it has disciplinary power over firemen sufficient to guard against this.

The human element now presents the crux of the case. The writer is individually of the opinion that in normal times there might be such assurances of proper construction, proper maintenance, and careful use as to justify the use of coal burning locomotives at all times; but the Commission is of the opinion that especially under the abnormal and peculiar conditions which have prevailed for some time in the past and which threaten to continue for a considerable period, the risk of faulty material, faulty workmanship, and faulty operation is too great to justify any modification of the order.

All concur.

Petition of THE WESTCHESTER STREET RAILROAD COMPANY under section 53, Public Service Commissions Law, for approval of the exercise of rights under amendments to certain franchises of said company from municipalities; also as to filing passenger tariff on short notice. [Case No. 6772.]

Where a trolley system is interurban as well as urban, and franchise restrictions require flat, through, limited fares, large increases in such flat rates, by agreement with the municipalities affected, may cause a reduction instead of an increase in operating revenue.

Based on an operating revenue in 1917 of \$246,829, the increase from 5 cents to 7 cents, calculated to produce a large proportion of \$98,631 (40 per cent of \$246,829), resulted in a decrease in operating revenue amounting to \$3194.

Rates on such systems should be adapted to induce use by the short-trip rider as well as to accommodate the interurban rider, and should be carefully adjusted to the convenience and necessities of each class. A zoning arrangement to meet these conditions is approved.

Decided March 26, 1919.

Appearances:

Eugene F. McKinley, White Plains, for the applicant.

Moses Miller, 103 Westchester avenue, Port Chester, attorney for the Town of Rye.

Clarence DeWitt Rogers, 141 Broadway, New York city, for the Village of Larchmont.

Benjamin I. Taylor, Port Chester, attorney, and *John A. Strothkamp*, Harrison, Town Clerk, for the Town of Harrison.

William H. Condit, White Plains, Corporation Counsel, for the City of White Plains.

Ralph A. Gamble, 347 Madison avenue, New York city, attorney for the Town of Mamaroneck.

W. E. Lyon, 286 East Boston Road, Mamaroneck, representing property owners in the village of Mamaroneck.

Frank A. Briggs for the Town of Greenburgh.

David Tepp for the Village of Elmsford.

FENNELL, *Commissioner*:

This is an application by The Westchester Street Railroad Company for approval of the exercise of rights under amendments to franchises granted by the municipalities in which its owned and leased trolley lines are operated; also to file passenger tariff on short notice.

Hearing was held March 14, 1919.

The Westchester Street Railroad Company operates a street surface railroad from the station of the New York and Harlem railroad in the city of White Plains over various streets in said city westerly to the New York Central station in the incorporated village of Tarrytown on the Hudson river; in its course it passes through the municipalities of White Plains, town of Greenburgh, Westchester county; incorporated village of Elmsford, about three miles from White Plains; and said village of Tarrytown, about six and a-half miles from White Plains.

In the city of White Plains there is a branch which operates from the New York and Harlem station to St. Agnes' Hospital in said city, a distance of about a mile and a-quarter.

It operates a branch to the city line, and thence in the town of Harrison, Westchester county, to Silver Lake Park, a distance of about two and a-third miles.

It operates a branch from the New York and Harlem station in White Plains southeasterly through the city of White Plains, town of Harrison, incorporated village of Mamaroneck, town of Mamaroneck, and incorporated village of Larchmont, a distance of approximately seven and a-half miles.

It operates a branch from the New York and Harlem station in White Plains, through the city to and in the village of Scarsdale (there is no town of Scarsdale), and to the southerly limits of the village of Scarsdale, where it strikes the tracks of the Westchester Electric railroad, and operates

over them to the city of Mount Vernon, passing on the way through the town of Eastchester and the incorporated villages of Tuckahoe and Bronxville, its cars running to the New York, New Haven and Hartford station in Mount Vernon, the entire distance from White Plains being about ten miles.

The company proposes a zoning system whereby it expects to increase its operating revenue.

The following figures show the results of the company's operations for 1917 and 1918 with sufficient definiteness for the purposes of this decision.

<i>1917 — 12 months ending December 31.</i>	
Total operating revenues.....	\$246,023.49
Total operating expenses.....	314,061.32
Operating loss	\$79,704.63
Taxes.....	12,012.78
Rent for leased roads.....	138.33
Miscellaneous rents	1,280.01
Interest on funded debt.....	12,150.00
Interest on unfunded debt.....	13,641.92
Amortization of disc. on funded debt.....	78.87
Deficit.....	106,988.76
<i>1918 — 12 months ending December 31.</i>	
Total operating revenues.....	\$242,829.48
Total operating expenses.....	291,767.90
Operating loss	\$58,344.97
Taxes.....	9,769.26
Rent for leased roads.....	138.33
Miscellaneous rents	8,596.55
Interest on funded debt.....	12,150.00
Interest on unfunded debt.....	17,288.23
Amortization of disc. on funded debt.....	78.92
Deficit.....	91,552.00

Although increases in rates were allowed in various municipalities from 5 cents to 7 cents during a considerable portion of 1918, nevertheless the above figures show that the total operating revenue fell off \$3194.01. Certain items of paving, etc., which were not as large in 1918 as 1917, gave the company a smaller deficit in 1918 by \$15,436.76, although its operating revenues were lower by the amount above mentioned.

The president of the company stated at the hearing that some relief must be had by the company from the conditions shown in the above figures or the company would be forced

into bankruptcy. Property worth in the neighborhood of \$1,000,000, as shown by the company's general balance sheet, December, 1918, making an annual loss of about \$100,000, is certainly headed toward bankruptcy unless some remedy can be applied. Bankruptcy of a trolley company rendering public service not only entails loss to the owners of the property and the bondholders but also causes great inconvenience to all those persons who necessarily must have transportation facilities in communities such as the ones here affected. These communities although neighbors are separated by outlying sparsely built up territory. This condition requires an operation that is as much interurban as urban to give the required service. The centers produce fairly good business but the "in between" is poor. The raise to 7 cents in rates caused a falling off in return because many of the people in the good business areas were within walking distance of their destinations. These communities need this trolley service as much between each other as within each of them, but some new method of fitting operating revenues to costs must be found. Rates must be made attractive enough to induce riding instead of walking in the closely built up areas, and the long hauls, interurban in nature within non-remunerative intermediate stretches, must bear a greater portion of rate burden than they have in the past.

In an endeavor to meet these conditions a zoning system has been devised by the trolley company whereby additional revenue may be obtained from the longer hauls, interurban in their nature. Following is the proposed zoning plan with the rates of fare as approved by the different municipalities.

The zone plan on which these rates of fare are established contemplates a fare and transfer limitation within a radius of one mile of the Courthouse in the city of White Plains, the limits of which on the different lines are as follows:

On the Tarrytown Line — Fulton Street.

On the Mamaroneck Line — Bloomingdale Switch.

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On the Mount Vernon Line — Quinby Switch.

On the Silver Lake Park Line — Mamaroneck River and Main Street.

Tarrytown Line

1st Zone: Between the western terminus of the village of Tarrytown and the eastern boundary of the village of Elmsford, a distance of approximately $3\frac{1}{2}$ miles, fare 5 cents.

2nd Zone: Between the western boundary of the village of Elmsford and the present terminus of the Tarrytown Line at the waiting room on Main street, adjacent to the New York Central depot in the city of White Plains, a distance of approximately $3\frac{1}{2}$ miles, fare 5 cents, with transfers to and from all cars operated within one mile from the Courthouse in the city of White Plains.

City of White Plains

3rd Zone: Between any points within the city of White Plains, fare 5 cents, with transfers to and from any and all cars within the city of White Plains.

Silver Lake Park Line

4th Zone: Between the eastern terminus in the town of Harrison and any point in the city of White Plains within a radius of one mile from the Courthouse in that city, fare 5 cents, with transfers to and from all cars operated within a radius of one mile from the Courthouse in the city of White Plains.

Mount Vernon Line

5th Zone: Between any points within a radius of one mile of the Courthouse in the city of White Plains and the southern boundary of the village of Scarsdale, a distance of 5.05 miles, fare 5 cents, with transfers to and from all cars operated within a radius of one mile of the Courthouse in the city of White Plains.

6th Zone: Between the southern boundary of the village of Scarsdale and the southern boundary of the town of Eastchester, a distance of 3.08 miles, fare 5 cents, with transfers to and from all cars of The Westchester Electric Railroad Company operated within the boundaries of the town of Eastchester.

7th Zone: Between any points in the city of Mount Vernon on the cars of the company [The Westchester Street Railroad Company], fare 5 cents, with transfers to and from all of the cars of The Westchester Electric Railroad Company operated within the corporate limits of the city of Mount Vernon.

Mamaroneck Line

8th Zone: Between points within a radius of one mile of the Courthouse in the city of White Plains and the corporate limits of the city of White Plains, fare 5 cents, with transfers to and from all cars

operated within a radius of one mile of the Courthouse in the city of White Plains.

9th Zone: Between the southern corporate limits of the city of White Plains and the northern limits of the village of Mamaroneck, fare 5 cents.

10th Zone: Between any points in the town of Mamaroneck, fare 5 cents, with transfers to and from all of the cars of the New York and Stamford Railway Company, as follows: At the New Haven Railroad bridge, Mamaroneck, northbound to Summer street in the town of Harrison, southbound to the southern limits of the town of Mamaroneck; at Chatsworth avenue, eastbound and westbound on the Larchmont Manor Line, and southbound to the southern limits of the town of Mamaroneck.

Following is a tabulation showing the effect of the zoning system with respect to relative rates per mile in the different zones and the per cent of increase under the new system.

It will be seen from the above that the proposed zoning system tends toward an equalization of rates. The various municipalities have consented to the above zoning system. The condition of the company is apparent from the facts as disclosed by the figures above set forth. The emergency is a pressing one. A valuation of the property is certainly not necessary in a case such as this.

The exercise of the rights granted under the amendments to the franchises and the increase in rates under the proposed zoning system should be approved. The company should be authorized to put into effect, on five days' notice, a tariff stating the new zones and passenger fares.

An order has been made accordingly.

The proposed zoning system and the accompanying rates of fare are limited to the periods of time mentioned in the resolutions of the various municipalities containing franchise modifications and to all additional periods of time under any renewals thereof.

Mr. W. E. Lyon appeared at the hearing and made objection to the zoning and rates in Zones 8, 9, and 10, and asked for a thirty days' adjournment to submit some different arrangement as to these zones. A long adjournment of this whole matter to permit an attempt at readjustment of a portion would work undue hardship and perhaps disaster. However, it is not desired to prevent Mr. Lyon presenting any substitute arrangement of rates or zones intended to work out a better adjustment between the company and its patrons. It is therefore understood that Mr. Lyon may submit reasonably soon any different plan as to zoning or rates in Zones 8, 9, and 10 for the consideration of this Commission.

Chairman Hill and Commissioner Irvine concur; Commissioner Barhite not present.

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of TRUSTEES OF THE VILLAGE OF GRANVILLE, Washington county, *against* GRANVILLE ELECTRIC AND GAS COMPANY as to proposed increases in price of gas and electricity furnished customers. [Case No. 6421.]

Decided March 27, 191

Appearances:

C. E. Parker, Village Attorney, Granville, N. Y., for the complainants.

M. D. Whedon, Granville, N. Y.; *B. S. Higley*, 50 Broad street, New York city; and *H. C. Hopson*, 61 Broadway, New York city, for the respondent.

HILL, Chairman:

The respondent does both gas and electric lighting in the village of Granville, and has filed a tariff increasing the rates to be charged for both gas and electric current for lighting in said village.

Before the increase, the rates for gas were 10,000 cubic feet or less, \$1.50 per M; over 10,000 and less than 15,000 cubic feet, \$1.30 per M; over 15,000 cubic feet, \$1.20 per M. The new tariff proposes that the only rate for gas shall be \$2 per M.

The former rates for electric current for lighting were 12 cents per kw.h. for the first 25 kw.h.; 11 cents for the next 25; 10 cents for the next 50; 9 cents for the next 100; 8 cents for all over 200. The increased rates are 15 cents per kw.h. for the first 25 kw.h.; 14 cents for the next 25; 13 cents for the next 50; 12 cents for the next 100; 11 cents for the next 200; 10 cents for all over 400. There is also an approximately corresponding increase in the price of electric current for power.

The complaint against the increase in the gas rate was originally based entirely on a condition in the franchise from the village to the company which limited the rate to \$1.50 per M. During the hearings, however, it was understood that the reasonableness of these rates should also be deemed an issue, and accordingly the Commission has considered and will determine the question of the reasonableness of the increases in both gas and electric rates.

Evidence was given on the part of the respondent tending to sustain a total capital investment of \$206,461.90 for the electric department, and \$90,865.62 for the gas department: a total of \$297,327.52.

No evidence was given on the part of the village on the subject of valuation. The Commission has had the detailed figures examined by its own divisions of capitalization, and light, heat, and power, and has arrived at figures which it seems fair should be determined to be the value of the property for rate-making purposes, namely:

	<i>Electric</i>	<i>Gas</i>	<i>Totals</i>
Structural cost of company's property and facilities.....	\$141,920.33	\$65,208.20	\$207,128.53
This includes incomplete allowances for certain factors of cost such as organization; engineering and superintendence; law expenditures during construction; injuries during construction; taxes during construction; miscellaneous construction expenditures; interest during construction; which exist in all complete properties and which are often calculated as amounting to from 10 to 15% of structural cost. If 12½% is taken, the amounts of.....	17,740.04	8,151.03	25,891.07
should be added, producing.....	\$159,660.37	\$73,359.23	\$233,019.60
The working capital requirements of the company are estimated to be	5,000.00	2,500.00	7,500.00
making a total of.....	\$164,660.37	\$75,859.23	\$240,519.60

These figures are designed to cover all elements of cost incident to the creation of the property of this company which was in useful public service at December 31, 1917.

The income account shows that the electric revenues for the year 1917 were \$25,890.01; gas revenues same period, \$8620.14; operating expenses, electric department,

\$14,681.14; operating expenses, gas department, \$8388.28; but with further deductions for taxes, electric department, \$1344; gas department, \$672.

This shows a small loss in operation in the gas department, and a profit of \$9864 in the electric department. These figures exclude any allowance for depreciation. It appears in evidence and is well known to all operators of lighting plants that there has been a very great increase in costs of labor and materials in the year 1918 over the year 1917; and an estimated income of twelve months to April 30, 1919, on the basis of the proposed new rates, which includes four months' actual experience of such rates, shows the following results:

	<i>Electric department</i>	<i>Gas department</i>	<i>Totals</i>
Revenues	\$29,700.84	\$10,949.16	\$40,650.00
Revenue deductions, excluding depreciation	17,098.00	11,311.32	28,410.28
Net revenue, excluding depreciation	\$12,601.88	*\$362.16	\$12,239.72
Depreciation on P. S. C. rates	3,681.83	1,862.64	5,544.47
Operating income or loss	\$8,920.05	*\$2,224.80	\$6,695.25

* Loss.

It is clear from these figures that there will be a loss in the gas department, and that in the electric department there will be an operating income of about \$9000, equal to 51½ per cent on the determined investment of \$165,000 in that department; and it will be noted that about \$2200 of this will be absorbed by the prospective loss in the gas department. This is making no allowance for possible falling off in consumption due to the increased rates. Assuming these estimates to be correct, if the company is to continue in business at all, the prospective revenue from the increased rates is absolutely required to give it a reasonable margin over operating costs, to say nothing of a fair return on its investment.

Since the complaint was filed, the objection raised therein to the increase in gas rates, that such increase exceeds the price limited in the franchise above referred to, has been disposed of by the decision of the Court of Appeals in what is

known as the *South Glens Falls* case, decided January, 1919. In this case, however, it is clear that on either the old or the new gas rates the company will suffer loss in the actual operating expenses of that department without respect to any return whatever on investment; and it is therefore obvious that any enforcement of that agreement would have the effect of so increasing this loss as to call for a still greater increase in the electric rates, or as an alternative, the cessation altogether of the sale and distribution of gas. We can not see how either alternative would be of any advantage to the people of the village.

This increase of rates was contested very stoutly and ably on the part of the village, and every item of the company's property and every detail of its business was most thoroughly explored and discussed, but there seems no alternative but to sustain the rates as filed for both gas and electricity; and an order will be entered accordingly.

During the hearings on this complaint, certain amendments to the schedules were filed which initiated an increase in the minimum charge for the price of gas from fifty cents to one dollar per month, an increase in the minimum charge for the price of electric current from one dollar to one dollar and fifty cents per month, and the exaction of a penalty charge of 10 per cent upon the original bills for both gas and electricity if not paid by the fifteenth of the month. An additional hearing was had with a view to disposing of these increases at this time. The evidence showed that during the months of December and January last the extra receipts by reason of the penalty for prompt payment amounted to about \$21 per month in the electric department and about \$10.50 per month in the gas department; that the increase in the minimum charge from \$1 to \$1.50 in the electric department produced \$27.25 in December and \$33.70 in January, while the increase in the gas department yielded \$48.40 in December and \$48.70 in January. Since that hearing the company has expressed its willingness to reduce

the minimum charge on electricity to the former rate of one dollar. Eliminating the increase in the minimum rate for electricity and retaining that for gas, and assuming that the two months are a fair index for the year, we would have a total increase in income for gas of about \$700, and in addition the electric income through the penalty for late payment of about \$250 per year. We think these increases are not sufficient to disturb the determination above indicated, and an order will be entered accordingly, but without prejudice to the right of the village authorities to complain of these last named changes in the tariff if they decide so to do.

Commissioners Irvine and Fennell concur; Commissioner Barhite not present.

Petition of FISHKILL ELECTRIC RAILWAY COMPANY under subdivision 1, section 49, Public Service Commissions Law, for permission to increase passenger fares. [Case No. 6079.]

In the Matter of Complaints against the FISHKILL ELECTRIC RAILWAY COMPANY as to discontinuance of reduced rate tickets, and as to service; also suspension of proposed tariff. [Case No. 6550.]

Petition of FISHKILL ELECTRIC RAILWAY COMPANY for approval of a declaration of abandonment of a portion of its constructed route. [Case No. 6578.]

A requested increase in trolley rates may apparently be justified because of a lack of reasonable return; and yet the increase might, if granted, actually result in a decreased instead of an increased revenue. Where a deficiency in revenue must be met, the real problem is to find and fix the rates that will permit the most people to ride and still be high enough to cover costs. Such rates may be called the economic rates. They measure the economic demand for trolley service in the community.

"Economic rates" are the up limit of income. If the service is more extensive or expensive than that limit requires, then a proportionate scaling of assets or abandoning of portions of tracks, or both, must be had if the company is to become and remain solvent.

Decided March 27, 1919.

Appearances:

James B. Meyer, Beacon, as attorney for the Fishkill Electric Railway Company.

John T. Smith as President of the Fishkill Electric Railway Company.

Robert W. Doherty, Beacon, N. Y., as attorney for the Village of Fishkill, Town Board of the Town of Fishkill, the Fishkill Savings Institute, the Fishkill Rural Cemetery Association, and the Fishkill Village School District; *John N. Carlisle* of Albany as Counsel.

James Masse as President of the Village of Fishkill.

Graham Witschief, Newburgh, N. Y., for the Newburgh Chamber of Commerce and the Newburgh Ship Yards, Inc.

FENNELL, *Commissioner*:

These cases were tried together. The issues raised consisted of complaints against a proposed tariff, the discontinuance of the sale of tickets at reduced rates, and reduced service on the one side, and a proposed abandonment of portions of route on the other.

The Fishkill Electric Railway Company owns a railroad extending from Fishkill, N. Y., through the town of Fishkill and into the city of Beacon to a point designated as Central New England Railway Crossing, a distance of approximately 4.5 miles. At the Central New England Railway Crossing it joins the railroad owned by the Citizens Railroad, Light and Power Company which the Fishkill Electric Railway Company operates under lease. The distance from the Central New England Railway Company Crossing to the terminal in the city of Beacon — New York Central depot — is 1.5 miles, and there is a branch extending from Central New England Railway Crossing to the foot of Mount Beacon, a distance of 1 mile.

In June, 1918, the Fishkill Electric Railway Company petitioned this Commission (case No. 6079), which petition was in the nature of a complaint, alleging that the fares charged by the petitioner were insufficient to yield a reasonable return upon the value of the property actually used in the public service, and asked that notwithstanding section 181 of the Railroad Law the Commission increase the rate of fare from 5 to 6 cents. The case was decided July 25, 1918. At the time of petition and for many years prior thereto the road was operated with two fare zones of 5 cents each, one zone comprising the territory covered by the tracks of the company in the city of Beacon and beyond in the direction of Fishkill about one-half mile to Glenham Switch, covering a maximum haul of 3.7 miles, hereinafter referred

to as the Beacon zone; the other, the balance of the road, from Glenham Switch to Fishkill, covered a maximum haul of 2.3 miles, hereinafter referred to as the Fishkill zone. In addition to such zone fares, monthly tickets good for 60 fares during the month were sold for \$2; and tickets good to or from Fishkill from and to points on its line west of Glenham Switch, good for 50 fares if used within 18 days, were sold for \$1.50.

The decision in case No. 6079 permitted the company to charge a maximum fare in each of such zones of 6 cents. Effective August 7, 1918, the company filed a new schedule making such increases in its zone fares, and at the same time discontinued the sale of the reduced rate tickets and also reduced its service one-half. Because of the discontinuance of the sale of reduced rate tickets and the reduction in service, complaints were made to this Commission (case No. 6550).

Another hearing was held on November 21, 1918. Between these hearings the company filed a petition to abandon that portion of its constructed route west of Glenham Switch (case No. 6578), and thereafter on December 3, 1918, filed with the Commission a tariff schedule to become effective January 6, 1919, stating new proposed zone fares which increased the maximum fares as fixed by the Commission in case No. 6079. This tariff is under suspension by order of the Commission.

A further hearing was held on the cases involved (Nos. 6550 and 6578) on January 8, 1919. At this hearing it developed that the company had, commencing with the 1st of December, practically restored its service to what it was prior to August 7, 1918, such restoration being made voluntarily by the company in view of testimony of witnesses at the November hearings as to the inconvenience experienced by its patrons.

At the November hearings various witnesses testified as to their use of this company's lines for daily travel, and from their statements it appears that the discontinuance by the

company of reduced rate tickets for daily riders operated as a hardship to many of such patrons, particularly with regard to those residing in the Fishkill zone and having children attending school in Beacon, N. Y. Prior to August 7, 1918, such daily riders, including school children, could make the round trip between the Fishkill zone and the Beacon zone for practically 12 cents, whereas under the present tariff the charge is 24 cents, an increase of 100 per cent; and by the proposed tariff it would be 32 cents. In one instance a witness stated that he had four children, all attending school in Beacon, and the increase from 48 cents a day to 96 cents a day was an extreme hardship.

It is not necessary to go into the questions of valuation and reasonable return in this case, as the Opinion of the Commission in case No. 6079, decided July 25, 1918, allowing the increase in rates from 5 to 6 cents, stated that \$309,599 was a fair valuation of the property used by this petitioner in furnishing service; that no dividends have been paid to the stockholders of this road since its inception; that the deficit of the company for the year 1917 was \$3606.05. The evidence in this case seems to show that the deficit is growing larger.

The statement below was prepared from reports made by the Fishkill Electric Railway Company to this Commission covering period of years 1910 to 1917, both inclusive:

Year	Number of passengers	Rate per passenger	Total revenue	Total expense	Cost per passenger
1910.....	1,127,823	\$.0474	\$53,500	\$50,557	\$.0448
1911.....	1,115,464	.0473	52,711	54,496	.0479
1912.....	1,202,771	.0486	58,504	57,109	.0474
1913.....	1,227,786	.0495	60,795	58,357	.0475
1914.....	1,154,732	.0490	56,609	56,637	.0490
1915.....	1,073,223	.0493	52,886	56,989	.0531
1916.....	1,059,680	.0492	52,179	54,709	.0516
1917.....	1,123,919	.0494	55,483	54,263	.0482
Total.....	9,085,398	\$.3897	\$442,667	\$443,117	\$.3895
Average.....	1,135,675	.0487	55,333	55,389	.0487

The expense figures include:

Taxes, approximately.....	\$2500 per year
Depreciation, approximately.....	3500 per year
Interest on funded debt.....	3000 per year
Rental of Citizens Railroad.....	9000 per year

From the foregoing statement it appears that during the eight years there was no great variation in the number of passengers carried, nor was there any great variation in the yearly revenues or in the yearly expenses, which indicates that there is practically no outlook for this company to obtain an increase in the number of passengers carried. It also shows that during the eight years the rate return per passenger was practically the same as the carrying cost per passenger.

The following statement for months of August, September, and October, 1917 and 1918, was compiled from figures given by an officer of the company as witness at the November hearings, and it shows that under the new fares, with no reduced fares but operating under a decreased service, there was for these three months a decrease, viz.: In number of passengers carried, 28 per cent; in revenue, 12 per cent; in expense, 22 per cent. At the same time the carrying cost per passenger was increased 10 per cent.

	Number of passengers	Rate per passenger	Total revenue	Total expense	Cost per passenger
Aug. 1917.....	130,364	\$.0494	\$6,349.00	\$5,244.00	\$.0402
Aug. 1918.....	95,200	.06	5,712.00	4,738.92	.0498
Difference.....	D 35,164	I \$.0106	D \$637.00	D \$505.08	I \$.0096
Sept. 1917.....	113,218	\$.0494	\$5,593.00	\$5,979.00	\$.0528
Sept. 1918.....	93,000	.06	5,585.12	4,247.44	.0501
Difference.....	D 20,218	I \$.0106	D \$7.88	D \$1,731.56	D \$.0027
Oct. 1917.....	98,360	\$.0494	\$4,859.00	\$4,715.00	\$.0479
Oct. 1918.....	58,746	.06	3,524.74	3,905.91	.0664
Difference.....	D 39,614	I \$.0106	D \$1,334.26	D \$809.09	I \$.0185
Total 1917.....	341,942	\$.0494	\$16,801.00	\$15,938.00	\$.0486
Total 1918.....	246,946	.06	14,822.86	12,492.27	.0523
Difference.....	D 94,996	I \$.0106	D \$1,978.14	D \$3,445.73	I \$.0057
	D 28%	I 20%	D 12%	D 22%	I 10%

D denotes Decrease.

I denotes Increase.

At the hearing in January an officer of the company gave figures as to the number of passengers carried and revenue

received for the month of December, 1918, and for the same month in 1917. The figures given are reproduced below:

	<i>Number of passengers carried</i>	<i>Revenue</i>
Over the entire line 1917.....	91,882	\$4,536.90
Over the entire line 1918.....	76,250	4,575.00
In the Fishkill zone 1917.....	9,182	404.00
In the Fishkill zone 1918.....	7,625	457.50

This statement shows that there was a decrease in the number of passengers carried of 17 per cent, and an increased revenue of about \$40.

From such information as is available it is estimated that for the eight year period 1910 to 1917, inclusive, about 2 per cent of the travel was local in the Fishkill zone; and that about 6 per cent was through between points in the Fishkill zone and points in the Beacon zone, and that of this 6 per cent about 5 per cent paid regular fares and 1 per cent paid reduced fares; that about 7 per cent of the travel in the Beacon zone was from Glenham Switch and points outside the city of Beacon into the city of Beacon, and that about 6 per cent of such travel paid regular fare and 1 per cent paid reduced rate. The balance, 85 per cent, was wholly within the city of Beacon.

It is of record that the largest portion of the travel in the city of Beacon is during the period from Decoration Day until Labor Day each year, most of the people coming to Fishkill by boat and using this company's line for transportation from the ferry to the foot of Mount Beacon. It is also of record that the expense of operation fairly chargeable to the Fishkill zone is much greater than is the revenue which the company is receiving for such operation. The impracticability of reducing the expense of operation has been demonstrated. Therefore, it may be assumed that the only recourse which the company has is to either discontinue its operation in the Fishkill zone or to provide rates of fare which will yield it more revenue.

That portion of the line from Glenham Switch east into the village of Fishkill, which is herein termed the Fishkill

zone and which the company petitions for approval of a declaration of abandonment, is as shown on the record a great convenience to the people residing along the line of that road, and no sufficient reason was advanced by the company which would afford good cause for granting such petition at this time. The company will get some relief by adjusting its fares to meet the requirements of three zones.

Zone 1: From the terminal in Fishkill eastward through the village of Fishkill and beyond to a point in the town of Fishkill designated as Mulholland's Gate, maximum distance haul of 1.2 miles. Fare between any two points 5 cents.

Zone 2: From Mulholland's Gate to and including Glenham Switch, maximum distance haul 1.1 miles. Fare between any two points 5 cents.

Zone 3: From Glenham Switch to the terminal in the city of Beacon, a maximum distance haul of 3.7 miles. Fare between any two points 6 cents.

Through Fares:

Between points in Zone 1 and points in Zone 2, 8 cents.

Between points in Zone 2 and points in Zone 3, 11 cents.

Between points in Zone 1 and points in Zone 3, 14 cents.

And provide for the sale of 54-trip commutation tickets good to the purchaser only if used within thirty days from and including date of sale, viz.:

Between points in Zone 1 and points in Zone 3, at \$5.40.

Between points in Zone 2 and points in Zone 3, at \$4.85.

Also provide for the sale of 10-trip strip school tickets, good between certain hours each public school day, at one-half the regular through fare.

The supply of trolley service and the demand for such service are often not in proper adjustment. The builders of the trolley systems built according to their varying judgments. Naturally, the usual average of mistakes was maintained in these as in all human enterprises that must necessarily deal with futures such as city, suburban and interurban growth, direction of such growth, competitive methods of transportation, life of machinery and materials, rate of electrical machinery development with consequent obsolescence, labor costs, and numerous other variable factors. The legal entitle-

ment to a reasonable return on the value of the property used in the public service is only a right to earn same, not a guarantee. If errors of judgment were made regarding the factors above mentioned, it might well develop that the value or cost of a utility system might be greater than the public demand required. This requirement is the natural result of an economic law in operation and of course can not be altered by order of this Commission. An economic demand in one community may require service that will bear a 6 or 7 cent rate and render a reasonable return on the value of the property used, while in another community similar rates would actually reduce the operating revenue of the utility and make its second condition worse than its first. This has been demonstrated in many places in this State. This very company asked and received an increase of fare. A 20 per cent increase in fare actually produced, during an average month, less than 1 per cent increase in operating revenue. Another trolley road in this State was given an increase from 5 to 7 cents, a 40 per cent increase in rates, with the result that its operating revenue covering a large portion of the year 1918 was over \$3000 smaller under the new than the old rates. This Commission may make an order for an increase—that is the exercise of a legal power, but it can not create a demand for service at the new rate—that is the result of an economic law. A requested increase may apparently be justified because of a lack of reasonable return; and yet the increase asked might, if granted, actually result in a decreased instead of an increased revenue. Where a deficiency in revenue must be met, the real problem is to find and fix the rates that will permit the most people to ride and still be high enough to cover costs. These rates may well be called the economic rates. Lesser rates spell bankruptcy; higher rates mean reduced operating revenue and a similar result. When these rates are finally found they measure the economic demand for trolley service in that community. If the service is more extensive or more expensive than such

demand requires, then the system to become and remain solvent must scale sufficient assets or abandon enough of its tracks, or both, to reduce the outgo. The income has reached its limit at that point.

A careful study of the operation of this road, its past rates, the results of the increase in rates and the reduction in service, etc., has resulted in adopting the rates herein fixed as those best suited, for the present at least, to induce greater use by the public and produce more revenue for the company. The road is losing money and it is hoped that these rates will help it out of its financial difficulties.

In the meantime, and while these rates are being given a fair trial, the petition for approval of a declaration of abandonment of a portion of its lines will be denied, but without prejudice to renewing same at some later date.

The order in case No. 6079 should be modified, and the outstanding tariff suspension order in case No. 6550 should be vacated and set aside to permit the filing of a new rate schedule as herein suggested. Service as at present given should be continued, and full records of the fares collected should be kept by zones for future use.

An order has been made accordingly.

Chairman Hill and Commissioner Irvine concur; Commissioner Barhite not present.

Petition of the CITY OF SYRACUSE, by Richard B. Williams, Jr., Commissioner of Public Works, under section 90, Railroad Law, for determination of how new extensions of three streets in said city shall cross the Oswego and Syracuse Railroad (leased to and operated by The Delaware, Lackawanna and Western Railroad Company), United States Railroad Administration. [Case No. 6749.]

Where a city is providing for an industrial development, proposed highways across tracks used for industrial switching may be at grade if the train switching movements are flagged over the crossings.

Decided April 1, 1919.

Appearances:

E. L. Robertson, Assistant Corporation Counsel, for the City of Syracuse.

FENNELL, Commissioner:

This is a petition by the City of Syracuse for a determination as to whether Kirkpatrick street, Bear street, and North Geddes street shall be extended across railroad tracks of the Oswego and Syracuse Railroad Company (leased to and operated by The Delaware, Lackawanna and Western Railroad Company), under, over or at the grade of said railroad.

The officials of the City of Syracuse have adopted a plan looking toward the industrial development of that portion of the city of Syracuse in and about the "salt lands," so called, which surround the barge canal terminal in the city of Syracuse. Among other improvements connected with the industrial development, the city has laid out streets on the four sides of the barge canal terminal. These are Kirkpatrick street, running east and west on the south side; Bear street, running east and west on the north side; North Geddes street, running northeast and southwest on the west side; and Solar street, running north and south on the east

side of the barge canal terminal. The proposed railroad extensions in this industrial development consist of a track in the form of a loop leaving the Ontario Division of the N. Y. C. R. R. just south of Hiawatha street, running southerly along the easterly side of the barge canal terminal, and around the south end of the terminal but some little distance away from the same at the south end, connecting with the so called salt lands spur of the Oswego and Syracuse Railroad — the track in this proceeding — east of Leavenworth avenue; another switch leaving the salt lands spur of the Oswego and Syracuse Railroad near North Geddes street, running southeasterly around the southerly side of the barge canal terminal and ending a short distance therefrom. These plans will require a number of highway and railroad crossings. There will probably be nine such crossings, including the three herein passed upon.

The development of the solar salt industry in the city of Syracuse required the use of a large surface area of land as the salt was produced by the evaporational method. Modern improvements in the science of salt production have made the use of such large areas of lands unnecessary. The barge canal terminal located in the midst of these lands, and the lands themselves being within the city of Syracuse and about a mile from the heart of the city, give a splendid opportunity for industrial development. The branch of the Oswego and Syracuse Railroad which is to be crossed by the streets mentioned in this proceeding is in fact a freight spur extending from a connection with the main line north of Hiawatha street southerly to Spencer street, thence easterly parallel to Spencer street to a connection with a spur of the N. Y. C. R. R. near Clinton street. While it actually connects at its eastern end with the N. Y. C. R. R., it is only for the purpose of permitting the movement of an engine and coal cars far enough on the tracks of that railroad to permit the backing up of the coal cars onto the Rice coal trestle. The junction is not and has not been an inter-

change point. The spur is not and has not been used for passenger train movements. One train of about nine or ten cars is moved each day on this spur.

The streets when paved and graded will be about twelve feet above low water level in the lake and about six feet above high water level, although some times the high water elevation will make the difference less than six feet. If the railroad and highway grades are to be separated, the highway must be carried over the grade of the railroad, as the water level in the lake and in the barge canal terminal would prevent any crossing below grade. To get proper clearance for an overgrade highway crossing and a 5 per cent grade for trucking loads to the industrial plants would require approaches about five hundred feet long at each end of each bridge. It was testified on the hearing that nine such overgrade crossings would greatly reduce the availability of the highways for trucking purposes and that the cost would be prohibitive.

Carrying the railroad above the highway grade for the entire distance in the industrial development would not be a practical solution. The industrial plants should be on the same level as the highways and the railroads to permit switching directly into and from plants and to permit auto and team trucking directly to and from plants and switches.

If these highways were to cross a railroad having through freight and passenger traffic, a different question would be before the Commission. In this case the streets are really crossing a freight spur, and although when the tract is built up there will naturally be an increase in switching on the spur, the switching ought to be done with safety to the public by flagging the train movements across the highway crossings. Inasmuch as the industrial development of this tract requires that the crossings be at grade; and as the track is, as has been stated, only a freight spur; and as the train movements can be flagged across the crossings, it should be determined that Kirkpatrick street, Bear street, and North

Geddes street shall be extended across the railroad tracks of the Oswego and Syracuse Railroad Company at grade.

An order has been made accordingly.

All concur.

In the Matter of the Complaint of HERBERT C. PERSBACKER AND OTHERS *against* THE CALICOON INDEPENDENT ELECTRIC COMPANY, INC., asking that this Commission revoke the permission and approval granted said company to construct and exercise franchise. [Case No. 6712.]

Petition of SULLIVAN ELECTRIC COMPANY, INC., under section 68, Public Service Commissions Law, for permission to construct an electric plant in a portion of the town of Delaware, Sullivan county, and for approval of a franchise. [Case No. 6726.]

1. A municipality having granted a franchise for the construction and maintenance of an electric plant in its public highways, and the Commission having given its consent to the construction of such a plant and its approval to the exercise of the franchise, and the corporation having actually constructed its plant, the Commission is without authority to revoke the franchise or its consent and approval because of interruptions in service.

2. If an electrical corporation is unwilling or unable to render adequate service, the existence of its plant and its franchise is not in itself a sufficient reason for denying the approval of the exercise of a franchise granted to another company.

3. Where an electrical corporation is already lawfully operating, even though its service has in the past been seriously interrupted, approval will not be given to the construction of an independent plant and approval of the exercise of a franchise to another company in a community so small that the existing company has operated at great loss, and the evidence tends to show that the new company, if occupying the field alone, would be unprofitable. In this state of affairs the existence of competing companies would mean ruin to both and harm to the community.

Decided April 1, 1909.

Appearances:

Joseph A. Warren, 61 Broadway, New York city, for the complainants.

Guerney T. Cross, Callicoon, N. Y., for The Callicoon Independent Electric Company, Inc., respondent. [Case No. 6712.]

Henry F. Gardner, Callicoon, N. Y.; and *Joseph A. Warren*, 61 Broadway, New York city, for petitioner.

Guerney T. Cross, Callicoon, N. Y., for The Callicoon Independent Electric Company, Inc., in opposition. [Case No. 6726.]

IRVINE, Commissioner:

The first of these cases is a complaint by twenty-seven residents of Callicoon, Sullivan county, charging that The Callicoon Independent Electric Company, Inc., has not supplied electric service as required by its franchise; and asking that the Commission revoke "all rights, privileges, and franchises heretofore acquired by it for the failure on the part of said respondent herein to exercise the same". The other is an application by the Sullivan Electric Company, Inc., for permission to begin construction of an electric plant, and the approval of the exercise of a franchise therefor granted by the town board of the Town of Delaware, Sullivan county, Callicoon being within said town. The franchise purports to grant to the Sullivan Electric Company, Inc., the right to carry on the business of lighting by electricity or using it for heat and power "from the premises now occupied . . . and being from the electric power house formerly operated by The Callicoon Independent Electric Company, Inc., to the hamlet of Callicoon, and along the highway extending between such places in the town of Delaware, Sullivan county, N. Y., and also from the said electric power house through the hamlet of Hortonville to the hamlet of North Branch in the town of Callicoon, Sullivan county," etc. The two cases were heard at the same time, and as was stated by one of the parties at the hearing, are the outgrowth of neighborhood strife dignified in the evidence by the term of factional contest. The Callicoon company received permission to construct and approval of its franchise June 22, 1915 [case No. 4949]. It reported to the Commission in 1915 and 1916 that it had performed

as yet no service, and that it commenced business January 1, 1917. The evidence in the complaint against it is quite clear: that it discontinued service from January 26, 1918, to March 23, 1918; that its service thereafter was repeatedly interrupted until October 8th when it was discontinued entirely until about January 23, 1919, when it was resumed; and the service has since been rendered with apparent regularity. The principal reason for discontinuing the service is stated as inability to obtain coal. We need not inquire particularly into this because the Commission is of the opinion that it has no power to grant the relief asked in this complaint and therefore should not determine the merits. The Commission certainly has no power to revoke the town franchise. The plant has been constructed under authority of the Commission, and the exercise of the franchise approved. The non-user of the franchise may be ground for its annulment, or for the annulment of the corporation itself in a proper judicial proceeding, but it operates as a grant by the municipality, and the approval of its exercise operates also as a grant by the Commission. Expenditures have been made and obligations incurred on the faith of these grants, and the Commission has not been delegated power to revoke them.

We turn, therefore, to the application of the Sullivan company for permission to construct and for approval of the exercise of a franchise granted to it. If the Callicoon company is either unable or unwilling to furnish adequate service, its existence and its franchises are not of themselves sufficient reason for denying permission to construct and approval of the exercise of a franchise to another company. There are, however, in this case other reasons for denying the petition.

The franchise granted to the Sullivan company authorizes only service from the electric power house "formerly" operated by The Callicoon Independent Electric Company, Inc. At the time the franchise was granted the Callicoon

company was not operating, but the village board could not confer authority upon the new company to use the property of another company.

The evidence is entirely insufficient to justify a finding that public convenience and necessity require the construction or operation of the proposed new plant. The evidence on the part of the applicant tends to show that it would cost about \$12,000 to construct a new plant. The detailed figures show \$10,637, not including equipment for street lights, meters, or transformers, except three large transformers. The evidence on the part of the Callicoon company objecting to the approval tends to show a cost of \$25,000, and the reports of the Callicoon company show an actual expenditure by it of \$25,365. The plans of the Sullivan company on which its estimate is based provide for only 50-kw. capacity, with no reserve power in the way of boiler, engine, or generator. The Sullivan company estimates that it will have from ten to fifteen consumers in addition to those of the Callicoon company which it is assumed is to go out of business.

Taking this assumption, we find from the reports of the Callicoon company that it has forty-six consumers, but this embraces consumers in the hamlet of Hortonville which the Sullivan company does not at present intend to supply. The revenue of the Callicoon company in 1917 was \$2103.58. No evidence is offered by the petitioner as to the operating expenses of the new company, but evidence offered on behalf of the Callicoon company indicates \$4900 excluding taxes. The actual operating expenses of the Callicoon company as shown by the report were \$4447.45 in 1917. The taxes were not reported. Making the most liberal allowances for increases in business and saving in operating expenses, it would not seem possible for an independent company, with a separate generating plant, to maintain itself in a hamlet of about eight hundred people, even if Hortonville with one hundred and seventy-five people should be included in the

operation. The operations of the Callicoon company so far point to certain disaster. Its deficit at the end of 1917 is reported at \$2343.87. The entire business apparently would not warrant the enterprise, and as the Commission has no authority to compel the Callicoon company to cease operations even if it were so disposed, it is quite evident that the existence of two companies would mean almost immediate bankruptcy to both.

It seems that the Callicoon company has some tentative arrangement with the Livingston Manor company to transfer its property and franchises to the Livingston Manor company. Current would then be supplied by a transmission line from the Livingston Manor plant. It is possible that Livingston Manor, Callicoon, and Hortonville might all be provided with adequate service from a common generating plant, although this phase of the matter must await the hearing on the application for permission to transfer to the Livingston Manor company the plant and franchises of the Callicoon company, which it is said will be made and which has not yet been made. In the circumstances, nothing but harm could be accomplished by permitting the construction of a new plant with a generating system of its own in a region where the demand is so limited.

All concur.

Petition of KINGSTON CONSOLIDATED RAILROAD COMPANY under subdivision 1, section 49 of the Public Service Commissions Law for permission to increase passenger fares. [Case No. 6088.]

Decided April 1, 1919.

Appearances:

Howard Chipp, Kingston, for petitioner.

Palmer Canfield, Jr., Mayor, for the City of Kingston.

HILL, Chairman:

Petitioner, Kingston Consolidated Railroad Company, operates a street surface railroad about eight miles in length in the city of Kingston, and petitions under section 49 of the Public Service Commissions Law for leave to increase its rate of fare from five to six cents. The basis of the complaint in a general way is the large increase in operating costs caused by the war, with which we are all familiar. This Commission did not adopt the policy of granting these increases as a matter of course, but has required each company to show the particular effect which the unusual conditions have had in its case. It is interesting to note, as will further appear, that while the petition in this case was filed in June, 1917, the only ground on which an increase could possibly be considered is the estimated figures for the year 1919.

The local authorities appeared and formally objected to the proposed increase but did not cross-examine petitioner's witnesses or introduce any evidence, the Mayor stating for the record that if a *prima facie* case were made the city would be satisfied with the determination of the Commission increasing the fare.

The petitioner introduced the evidence of an expert witness tending to support a claimed investment of property used and useful in the public service, based upon an

appraisal made by the witness, to the amount of \$842,877.91, and the company claimed its return should be computed upon this sum. While no evidence was offered on the part of the city tending to criticise or contradict this appraisal, the Commission was not satisfied with it, and caused an appraisal to be made by its own division of steam railroads, which resulted in the following estimate:

Account		Estimated original cost	Original cost less depreciation
501	Engineering and superintendence	\$28,225	\$28,225
502	Right of way	5,000	5,000
503	Other land used in electric railway operations	26,750	26,750
504	Grading	20,925	20,925
505	Ballast	1,840	1,500
506	Ties	16,240	11,000
507	Rails, rail fastenings, and joints	47,065	41,000
508	Special work	20,650	16,000
510	Track and roadway labor	21,685	21,685
511	Paving	84,285	63,000
512	Roadway machinery and tools	200	175
516	Crossings, fences, and signs	35,000	32,000
519	Distribution poles and fixtures	19,730	14,000
521	Distribution system	22,730	18,000
523	Shops and car-house	29,000	20,000
526	Park and resort properties	22,520	17,000
530	Passenger and combination cars	66,000	45,000
532	Service equipment	3,200	2,500
533	Electric equipment of cars	44,000	35,000
536	Shop equipment	5,305	4,000
537	Furniture	1,500	1,200
538	Miscellaneous equipment	350	300
539	Power plant buildings	11,690	8,000
542a	Furnaces, boilers, and accessories	19,825	19,000
542b	Steam engines	21,940	16,000
542f	Electric generators	13,800	10,000
542g	Accessory electric power equipment	2,670	2,300
542h	Miscellaneous power plant equipment	550	500
546	Law expenditures	6,000	6,000
547	Interest during construction	17,780	17,780
548	Injuries and damages	5,000	5,000
549	Taxes	6,000	6,000
550b	Miscellaneous construction expenditures	5,000	5,000
Totals		\$632,455	\$519,840

These figures were submitted to the company and it agreed to accept them as a figure to be used solely for the purposes of the determination to be made in this proceeding and not to be binding in any future proceeding, and it will be treated accordingly. The valuation, it will be noticed, includes liberal items for assumed costs during construction of engineering, law expenses, interest, injuries and damages, and miscellaneous construction expenditures, a total of \$62,000. The

valuation is equivalent to \$65,000 per mile of track. Measured in this way and compared with other roads in cities of about equal size, it still seems very large. On the whole, we think it may justly be assumed to represent the fair value of the property. For the purpose of computing the rate of return from year to year, both the allocated cost and the depreciation shown in this statement have been worked back to the year 1913, in order to show what would have been the correct situation at the end of each of the accounting periods involved. This was done by the division of capitalization after an examination of the company's books, based upon the figures for additions to and retirements of property, and to the allocated costs as thus developed at the end of each year has been added the amount of other assets, this being equivalent to the working capital which was actually employed on the respective dates. From the total thus reached has been deducted the amount of the reserve for accrued depreciation, the result being the rate base which has been employed and applied to the income account for the purpose of determining the actual returns the company has had in each of the years upon its net investment. There was no evidence of any going value, and the accounts for the past years negative any possible claim for going value which might be based upon deficiency of return.

The income accounts for the years 1913 to 1918 inclusive, which were presented in evidence by the company, have been critically examined by the division of capitalization, and it has been found necessary to make a large number of important corrections in order to produce a net income statement which is believed to be reliable and consistent with the facts. This necessity arose from the fact that the company omitted to follow the Uniform System of Accounts established by the Commission in accounting for additions to and retirements of its property from year to year, but followed the practice of charging all costs of construction work to operating expenses regardless of the nature of the items.

Based upon this inquiry certain exhibits have been prepared which the Commission will accept as approximately accurate and to which reference is now made. Schedule "A" is the corrected income account for the periods mentioned, the calendar year 1919 being necessarily estimated, and this estimate is given both upon a five cent fare base and a six cent fare base. The second half of the calendar year 1917 is omitted because of the change in the official accounting period which became effective in that year. This schedule also shows the rate of return which the company is found to have had in each of the years in question upon the rate base which has been adopted and which is referred to in Schedule "C." Schedule "B" is designed to show corrected operating expenses, including what are believed to be proper and adequate accruals for depreciation applied upon the straight line theory, with estimated operating expenses for the year 1919. Schedule "C" furnishes the rate base which was used in each of the years mentioned. The so called rate base is equivalent to value of property used and useful in the public service, and the total is made up for each year by the use of the Commission's valuation worked back through the respective years as above stated. From the total amount arrived at for the different periods has been deducted the amount of the corrected reserve for accrued depreciation.

SCHEDULE A: CONDENSED INCOME ACCOUNT (excluding Interest and Dividends)

Item	Years ended June 30						Dec. 31, 1918	Estimated 1919	
	1913	1914	1915	1916	1917	Based on 6c fare			
						Dollars		Dollars	
Operating revenues, transportation:									
Cash fares.....	145,798.60	148,370.20	137,580.75	136,030.95	135,804.90	154,292.20	}		
Ticket fares.....	4,081.49	4,575.25	4,593.81	5,003.71	5,492.25	3,620.86			
Chartered car earnings.....	82.00	127.00	285.45	55.60	21.50	6.00			155,000.00
Mail earnings.....	696.00	692.00	696.00	696.00	696.00	696.00		696.00	696.00
Total revenues from transportation.....	150,658.09	153,764.45	143,136.01	141,786.16	141,984.65	158,615.06		155,696.00	180,696.00
Operations other than transportation:									
Advertising and other privileges.....	600.00	600.00	600.00	600.00	600.00	600.00	}		
Sale of power.....	505.59	52.80	.....	47.40	54.40	85.00			
Park and resort revenue.....	3,857.78	3,896.17	3,568.21	3,151.17	2,810.04			600.00	600.00
Total non-transportation revenues.....	4,963.37	4,548.97	4,168.21	3,798.57	3,494.44	685.00		600.00	600.00
Total operating revenues.....	155,621.46	158,313.42	147,304.22	145,584.73	145,449.09	159,300.06		156,296.00	181,296.00
Operating expenses.....	92,274.59	94,276.25	90,028.10	94,445.31	100,217.04	116,139.13		133,700.00	133,700.00
Net operating revenue.....	63,346.87	64,037.17	57,276.12	51,139.42	45,232.05	43,160.93		22,596.00	47,596.00
Taxes.....	8,807.91	7,360.86	8,586.82	9,422.44	7,537.17	10,891.43		12,000.00	14,000.00
Operating income.....	54,538.96	56,676.31	48,689.30	41,716.98	37,694.88	32,269.50		10,596.00	33,596.00
Non-operating income:									
Interest revenue.....	.....	.....	201.11	426.51	230.48	386.01		240.00	240.00
Miscellaneous rent revenue.....	.....	.....	25.00	75.00	173.93	191.67		200.00	200.00
Total non-operating revenues. Non-operating revenue deductions.....	.....	.....	226.11	501.51	404.41	577.68		440.00	440.00
Total non-operating income.....	.....	.....	.....	6.25	.....	.....		.....	.....
Total non-operating income.....	.....	.....	226.11	495.26	404.41	577.68		440.00	440.00
Amount available for return and contingencies.....	54,538.96	56,676.31	48,915.41	42,212.24	38,099.29	32,847.18		11,036.00	34,036.00
Rate base.....	533,788.80	531,217.21	542,969.92	545,457.37	551,732.23	548,622.55		548,622.55	548,622.55
Ratio of return.....	10.22%	10.67%	9.01%	7.74%	6.91%	5.99%		2.01%	6.20%

SCHEDULE B: STATEMENT OF OPERATING EXPENSES FOR THE YEARS ENDED JUNE 30, 1913 TO 1917 INCLUSIVE AND YEAR ENDED DECEMBER 31, 1918

Item	1913	1914	1915	1916	1917	1918	Estimated 1919	
							Based on 5c fare	Based on 6c fare
	Dollars	Dollars	Dollars	Dollars	Dollars	Dollars	Dollars	Dollars
Maintenance way and structures:								
Roadway and track maintenance:	3,923.53	2,102.96	282.95	3,343.65	4,926.86	1,201.94	850.00	850.00
Cleaning and sanding track:	749.97	853.74	926.89	806.55	717.00	900.00	900.00	900.00
Repairs:	44.12	2,159.13	265.79	1,806.95	276.35	503.13	900.00	900.00
Repairs electric power line:	306.90	838.59	209.46	519.58	1,463.02	563.78	400.00	400.00
Repairs buildings and structures:	67.29	193.06	69.62	62.51	129.23	177.23	200.00	200.00
Total maintenance way and structures:	5,091.80	6,137.48	1,754.71	6,538.24	7,513.06	3,173.66	2,950.00	2,950.00
Maintenance equipment:								
Superintendence equipment:	184.00	453.21	470.43	558.07	595.71	649.75	700.00	700.00
Repairs power plant equipment:	1,494.75	3,023.80	782.98	861.58	1,105.06	1,395.20	1,000.00	1,000.00
Repairs cars:	2,039.28	2,469.69	2,231.74	2,504.08	2,807.67	3,937.05	4,700.00	4,700.00
Repairs electric equipment of cars:	1,644.62	1,634.25	1,870.40	1,500.80	1,211.11	2,100.58	2,800.00	2,800.00
Miscellaneous equipment expenses:	2,064.11	2,381.95	2,437.93	2,287.75	2,367.75	3,170.04	3,300.00	3,300.00
Other operating debts:	.....	248.20	299.40	252.54	162.60	.....	.....	.....
Total maintenance equipment:	7,426.76	10,211.10	8,092.88	7,964.88	8,420.38	11,252.62	12,500.00	12,500.00
Depreciation ways and structures and equipment:	18,912.63	19,330.33	19,662.83	19,809.99	19,872.83	19,879.10	20,000.00	20,000.00
Total maintenance and depreciation:	31,431.19	35,678.91	29,510.42	34,313.11	35,815.27	34,305.38	35,450.00	35,450.00
Expenses other than maintenance:								
Traffic expenses:	4,450.13	2,975.78	3,479.94	3,296.73	3,643.04	9.40	.....	.....
Power expenses:	13,872.41	12,662.69	12,506.99	12,772.43	14,856.94	24,393.51	28,100.00	28,100.00
Operation of cars expense:	31,513.53	32,087.02	32,485.83	32,067.36	33,493.60	44,725.81	54,900.00	54,900.00
General and miscellaneous:	10,006.33	9,860.95	*11,043.92	10,994.68	11,407.19	12,705.03	15,250.00	15,250.00
Rental of pavilion and bandstand at Park:	1,001.00	1,001.00	1,001.00	1,001.00	1,001.00	.....	.....	.....
Total operating expenses:	92,274.59	94,276.25	90,028.10	91,445.31	100,217.04	116,139.13	133,700.00	133,700.00

* As reported except for exclusion from operating expenses of \$10,000 charged to accident and damages in 1915 to establish a casualty and insurance reserve.

SCHEDULE C: RATE BASE CALCULATIONS

	June 30, 1913	June 30, 1914	June 30, 1915	June 30, 1916	June 30, 1917	June 30, 1918
	Dollars	Dollars	Dollars	Dollars	Dollars	Dollars
Allocation of cost of property at December 31, 1918 (adjusted for earlier years), as per division of steam railroads' report (Petitioner's Exhibit 6).....	613,409.47	619,412.85	626,057.85	630,602.97	632,254.60	632,455.00
Other assets.....	11,532.16	15,909.22	21,569.91	23,860.40	29,492.63	28,782.55
Total.....	624,941.63	635,322.07	647,627.76	653,472.37	661,747.23	661,237.55
Estimated reserve accrued depreciation at December 31, 1918 (adjusted for earlier years), as per division of steam railroads' report (Petitioner's Exhibit 6).....	91,182.83	104,104.86	104,627.84	108,018.00	110,015.00	112,615.00
Rate base.....	533,758.80	531,217.21	542,999.92	545,457.37	551,732.23	548,622.55

The estimate for 1919 shows a rate of return of 2.01 per cent at the five cent fare, and 6.20 per cent at the six cent fare. Allowance has been made for a 3 per cent decrease in traffic as compared to $8\frac{1}{3}$ per cent claimed by the company.

It will now be of interest to compute the average returns indicated by these figures over various periods in order to determine the duty of the Commission with respect to the immediate future. The return which the law permits is an average return. The statute does not direct over what period of time the average shall be applied, leaving that to the reasonable judgment of the Commission. A five-year period, which excludes the estimate for 1919, gives a fraction over 8 per cent; a seven-year period, including the estimate for 1919, gives about $7\frac{1}{2}$ per cent; and a six-year period, excluding the estimate for 1919, about 8.4 per cent. Assuming a five-year period to be the fairest average, it appears that for the five calendar years ended December 31, 1918, the rate of return was slightly over 8 per cent; and that for a like period ending December 31, 1919, with the latter year estimated, the return will be 6.3 per cent with a five cent fare, or 7.7 per cent with a six cent fare, in 1919. These averages are not in themselves particularly impressive as a demonstration of a needed increase, especially in view of the fact that the final year is based on an estimate, and the worst fears of the company for that year may not be realized. Much more significant is the trend of the rate of return for the five-year period ending with 1918, which discloses a steady and decided downward tendency, thus —

<i>Year</i>	<i>1914</i>	<i>1915</i>	<i>1916</i>	<i>1917</i>	<i>1918</i>
Rate of return...	10.69	9.01	7.74	6.91	5.99

Ignoring therefore the great drop to 2.01 per cent estimated for 1919, we find a curve which if continued would within a very short term of years arrive at zero.

We think the company should be allowed to meet this condition by an advance in fare from five to six cents, with

the hope that the need of the increase will prove to be temporary.

Attention is directed to the fact that the estimated expenses for 1919 include an item of \$20,000 for depreciation, which the Commission considers proper in amount. The Commission, however, has no power to require that any stated sum or fixed percentage shall be thus set up in the depreciation account, and should the company omit to charge this item to operating expense it could show at the end of the year a return very largely in excess of that contemplated. We shall consider, however, that good faith will require that this item be set up as indicated.

We also direct the attention of the company to its relatively large property account in cars. This arises from the apparent fact that convertible cars have not been provided, so that summer use is provided by a large number of cars for use in summer only. This is somewhat behind the more modern practice and should receive early attention.

An order may be entered putting a six cent fare into effect on April 15th, to remain in effect for a period of one year, and thereafter until the further order of the Commission.

All concur.

Petition of the TOWN BOARD AND SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF HARRIETSTOWN, Franklin county, under section 90 of the Railroad Law for a determination of how a new highway shall cross the New York Central Railroad at Lake Clear Junction. [Case No. 6464.]

Where a new highway is laid out across a railroad for the purpose of giving access to lands which were cut off by the closing of an existing crossing 210 feet from the proposed crossing, the rights of the parties in respect to the old crossing should be determined in an appropriate legal proceeding before the railroad, the town, and the State are subjected to the expense of constructing an overgrade crossing.

Decided April 10, 1919.

Appearances:

Francis B. Cantwell, Saranac Lake, attorney for the petitioners.

Eugene Keet, member of the Town Board of the Town of Harrietstown.

Allen & McClary (by Mr. McClary), Peoples Bank Building, Malone, for The New York Central Railroad Company.

FENNELL, Commissioner:

This is a petition asking a determination as to whether a proposed highway shall cross a railroad at, above or below grade. A highway 115 feet long and 49.5 feet wide has been laid out crossing the Adirondack division of the New York Central at Clear Lake Junction, in the town of Harrietstown, Franklin county.

At the proposed crossing the railroad runs northeast and southwest, but it was treated on the hearing as running north and south. The same directions will be used herein. The short proposed highway crosses the railroad track at right angles and joins the Lake Clear-Saranac Lake Inn

highway. The latter is an improved road, which at the crossing is easterly of the railroad and runs parallel thereto. Prior to the construction of the railroad the main highway ran nearer to the shore of Lake Clear and formed a loop which crossed the present location of the railroad track at two points. To avoid these two crossings in the construction of the railroad in 1891 the highway was re-located easterly of the railroad track and parallel thereto. The northerly end of this loop seems never thereafter to have been used, but the southerly end was later used by people living in four dwellings on the westerly side of the track.

By a deed dated October 8, 1906, Anna E. Otis conveyed to Queenie M. Davis a small parcel of land together with a right of way from the parcel conveyed to the railroad crossing at the southerly end of the loop. By a later deed between the same parties, Mrs. Davis became the owner of land over which the right of way ran so that she owned land extending to the old railroad crossing, so called.

In January, 1917, Mrs. Davis wrote a letter to the railroad company complaining that the highway crossing was not in fit condition for use and asked the railroad company to remedy the condition. The result was a direction by the railroad company to Mr. Otis, owner of the land east of the railroad, to close and lock the gate at the crossing. This was done, and thereafter those using the highway to the west of the railroad had to pass northerly over land of the Paul Smith Hotel Company to reach the crossing at Lake Clear Junction—the distance from the old crossing to the junction crossing being about eighteen hundred feet.

It appears that on the 5th day of August, 1899, a resolution was adopted by the town board to discontinue the use of the old highway within the loop, but nothing further appears to have been done about the matter, and the southerly end remained open and in use until the crossing was closed as heretofore mentioned. In fact, the highway which

formed the southerly end of the loop is still in use except that portion forming the crossing.

It is true that the only question before this Commission is the manner in which the highway shall cross the railroad, but the unusual conditions obtaining in this case seem to require, or at least warrant, the discussion of these other questions as they have a direct bearing upon the determination of the issue herein.

If the old highway crossing at the southerly end of the loop still remains an existing public highway for the use of those residing on the westerly side of the track, there ought not to be another crossing within 210 feet of the old crossing. If the old crossing is not a public crossing but is a private or farm crossing which some or all of the persons affected have the legal right to use, then their rights should be determined before another crossing is ordered.

It would seem that these legal questions should be determined before the railroad, the town and the State enter upon so costly an elimination.

The elevation of the water in the lake makes an under-grade crossing inadvisable. An overgrade structure would cost from \$60,000 to \$70,000, which cost would be prohibitive as the town will undoubtedly not desire to raise its share of that amount to accommodate the few persons having property west of the railroad as herein mentioned. There is testimony to the effect that it would cost about \$500 to lay out and grade a highway along the westerly side of the track at substantially the same location as now used by permission of the intervening land-owner. This estimate includes a snow fence but not the cost of the required land.

The crossing should be above grade, but inasmuch as the cost will be so great in proportion to probable use, it is unnecessary at this time to determine, as provided by statute, the height, length and material of the structure, and the length, character and grade of the approaches.

An order has been made accordingly.

If the town board of Harriestown shall hereafter determine that the town is ready to proceed with the elimination and willing to pay its share of the cost of such an overhead structure, the Commission will thereupon make a determination as to the matters above mentioned.

If the old crossing is neither public nor private and the town does not feel it can afford to pay its share of an over-grade crossing, there still remains the opportunity to give these residents of the town access to their property from the public highway by laying out a new highway to the north along the location of the present traveled way to the Lake Clear Junction crossing. However, before any elimination work at the crossing shall be undertaken, a court of competent jurisdiction should make a determination as to the legal questions above mentioned.

All concur.

In the Matter of the Complaint of CUSTOMERS IN OWEGO
against OWEGO GAS LIGHT COMPANY as to proposed
increase in price of gas. [Case No. 6445.]

Decided April 17, 1919.

Appearances:

Benjamin W. Loring for the petitioners.

E. H. Palmer, President of the Owego Gas Light
Company.

H. O. Palmer, Vice-president of the Owego Gas Light
Company.

H. L. Coleman, General Manager of the Owego Gas Light
Company.

FENNELL, Commissioner:

The complaint herein grew out of a raise in price and an alleged reduction in pressure and quality of gas. On the hearing practically no complaint was made against the increase of 25 cents a thousand cubic feet providing the quality and pressure would be made satisfactory to the consumers. Nineteen witnesses were sworn and the testimony showed that both the quality and pressure of the gas had been unsatisfactory for some time prior to the hearing but that some improvement had taken place immediately prior thereto. The company contended that war time conditions made it extremely difficult to produce a satisfactory quality of artificial gas but that strenuous efforts would be used to produce gas of a pressure and quality satisfactory to the consumers. To keep track of the efforts of the company and the service to the consumers, the hearing Commissioner appointed a local committee with Henry L. Armstrong as chairman, Benjamin W. Loring, attorney for complainants, and Roy Colby as three members, and the company selected H. L. Coleman, John K. Silsbee and E. H. Palmer as the remaining three members. The Committee were to receive

all complaints from consumers and take up each complaint with the company's local officers to find and remedy the condition causing the complaint. This Committee gave freely of its time and efforts during several months and helped to bring about better service.

One of the Commission's inspectors visited Owego for the purpose of ascertaining conditions, and in his report dated February 28, 1919, states that his investigation showed the service to have reached a reasonably satisfactory condition.

Very little evidence was given at the hearing as to the need for the increase in rates. In case No. 6266, now before the Commission, in which said Owego company asks to transfer its franchises, works and system to the Empire Gas and Electric Company, an inventory was submitted by the company totaling \$119,445.88 for the physical property exclusive of materials, supplies, merchandise, etc. In the same case the division of light, heat and power of this Commission estimated the physical property to have cost \$92,545.38. The company protested that this figure was too low but has expressed its willingness to accept it for the purposes of that proceeding. The bonds outstanding amount to \$50,000 and the other indebtedness to approximately \$40,000, making a total indebtedness of \$90,000.

The results of the operations of this company for the year 1918 are shown in the following figures taken from the report of the company for that year filed with the Commission:

<i>Year ended December 31, 1918:</i>		
	<i>Cu.ft. sold</i>	<i>Revenue</i>
General gas sales.....	8,778,500	\$13,812.70
Industrial and power.....	1,736,800	1,538.04
Merchandise and jobbing revenue		465.82
Non-operating revenue		66.00
Totals	10,515,310	\$15,882.56
<i>Expense:</i>		
Operating expenses		\$19,438.91
Taxes		689.34
Bond interest (not actually paid).....		2,500.00
Other interest		1,196.76
Total		\$23,825.01
		15,882.56
Deficit for year 1918.....		\$7,942.45

Operating a property that has a value of about \$92,500 and making a deficit of \$7942.45 for the year shows the necessity for the increase of 25 cents per thousand cubic feet. Had the increase been in force for the whole year, the revenue would not have been much more than enough to pay two-thirds of the operating expenses, taxes and interest.

The increase should be permitted to stand.

The complaint as to quality and pressure was well founded when made but has since, under all the circumstances of this case, been reasonably satisfied.

An order has been made accordingly.

All concur.

Petition of THE YONKERS RAILROAD COMPANY under section 184, Railroad Law, for approval of a declaration of abandonment of portions of its constructed route and franchises. [Case No. 6684.]

Where the past history, the present experience, and the future prospect of a street surface railroad extension make it manifest that operating expenses have not been and can not be earned, and the railroad as a whole after several years' operation has failed to earn any return on investment, the Commission will approve the certificate of abandonment of the extension pursuant to section 184 of the Railroad Law.

"Public convenience" can not be predicated upon a condition where the public patronage is insufficient reasonably to support the road from a financial standpoint.

Decided April 17, 1919.

Appearances:

Alfred T. Davison, 233 Broadway, New York city; *Leverett F. Crumb*, Yonkers; and *Addison B. Scoville*, attorneys for the petitioner.

William J. Wallin, Mayor; and *William A. Walsh*, Corporation Counsel, for the City of Yonkers.

Joseph Esser, Corporation Counsel, for the City of Mount Vernon.

Frederick T. Burns for the Village of Hastings-on-Hudson.

Dr. Bertram Ball, Yonkers, for the Yonkers Taxpayers Association.

John C. Ten Eyck, Yonkers, for the North Yonkers Citizens Association.

Edward H. Hoffnagle, Mount Vernon, President Chamber of Commerce of Mount Vernon.

C. W. Clark, Yonkers, Chairman of Special Railroad Committee of the Chamber of Commerce of Yonkers.

Thomas H. Burke, Yonkers, President Real Estate Board of the City of Yonkers.

HILL, *Chairman*:

Petitioner is a street surface railroad company owning and operating street surface railroads in certain streets, avenues, and highways in the city of Yonkers and the adjoining village of Hastings-on-Hudson. It has filed its petition dated December 11, 1918, for the approval by the Commission of a certain declaration of abandonment adopted by its board of directors on the 10th day of December, 1918, whereby said board of directors, proceeding under section 184 of the Railroad Law, undertakes to abandon certain parts of its railroad on the ground that they are no longer necessary for the successful operation of its road and the convenience of the public. The formal ratification and adoption of such declaration of abandonment by the stockholders, pursuant to said section, is annexed to and forms part of the petition.

The abandonment covers various sections of track in the city of Yonkers, and also includes all of the petitioner's track in the village of Hastings-on-Hudson. The portion of the road in Hastings-on-Hudson begins at a point on the north line of Warburton avenue in the city of Yonkers, thence northerly through West Broadway, commonly known as "Warburton Avenue extension," in the village of Hastings-on-Hudson, across the Hastings bridge; thence along West Broadway or Warburton Avenue extension to Main street; thence easterly along Main street to Farragut road, and southeasterly on Farragut road to Green street, a distance of about two miles.

The petitioner has withdrawn its application so far as concerns all of the abandonment in Yonkers, leaving the application to be determined with respect only to the portion of the road in Hastings-on-Hudson. Issue was joined on the petition, and hearings were had and evidence taken, the Village of Hastings-on-Hudson appearing in opposition by Frederick T. Burns, its Counsel.

The evidence introduced on the part of the petitioner, and which was not contradicted, abundantly proves that the

operation of the Hastings line has never been profitable, and the sharp accentuation of expense of operation caused by the war has caused a corresponding increase in the deficit. Thus, the earnings per car-mile of the Hastings line were in the year 1913 19.24 cents, against operating expenses, including taxes and rentals, 21.25; in 1914, 17.31 cents, against expenses of 23.01; in 1915, 17.51 cents, against expenses 22.94; in 1917, receipts of 20.06 cents, against expenses 30.39. These comparisons are made by adopting as an operating expense per car-mile the average operating expense over the system, and crediting to the Hastings line so much of the traffic as is considered properly assignable to that portion of the road.

The financial history of this company has been one of great difficulty and distress, and for the past six years the annual deficits from operation have varied from \$59,000 to \$252,000. No return has ever been made on investment, so that it is not necessary to consider any valuation or any rate of return. There has never been any return.

Upon the facts shown there seems no doubt of the right of the petitioner to abandon the Hastings line. It seems superfluous to argue that under the circumstances, the company having given the road in question a fair trial and it not being needed for strategic purposes to reach other sections lying farther to the north or east, and that it has never earned operating expenses, this portion of the road may fairly be considered no longer necessary for the successful operation of petitioner's system. As concerns convenience of the public, it can hardly be claimed that public convenience can be a defense to the abandonment unless the contribution which the public makes to the support of the road will pay operating expenses and some reasonable return on investment.

In this case it appears clearly that no return on investment has ever been earned, and that for many years the portion of the road in question has failed to earn operating expenses.

Had the Yonkers system as a whole, including the Hastings extension, been reasonably profitable, it might and probably would be necessary to consider whether the unprofitableness of the Hastings track in and by itself should be controlling upon this application. But, as stated above, it is clear from the evidence that the system as a whole has been unprofitable, as well as the Hastings division considered separately. Furthermore, if the Hastings line, either separately considered or as part of the system, was found to be suffering only a temporary falling off in revenue due to increased war costs, a different view would be permissible. Here, however, there is no indication either from the past history, the present experience, or the future prospect of the trackage in question that even operating expenses can be earned.

We think the applicant has brought itself by the evidence clearly within the spirit and intent of section 184 of the Railroad Law. That section prescribes the legal steps necessary to be taken by a street surface railroad before it can abandon operation of any part of its road. The requisite facts are that the portion proposed to be abandoned is no longer necessary for the successful operation of the road and convenience of the public. We do not believe public convenience can be predicated upon a condition where the public patronage is insufficient reasonably to support the road from a financial standpoint.

These views lead to a determination to approve the resolution of abandonment which has been presented, so far as concerns the track in the village of Hastings-on-Hudson, and an order will be entered accordingly.

All concur.

Petition of the UNITED STATES RAILROAD ADMINISTRATION, BOSTON AND MAINE RAILROAD, to discontinue the Wayville and Reynolds stations. [Case No. 6638.]

Abandonment of railroad station: Before abandonment is ordered it should be shown that the company had provided and used the most economical plan for conducting the business of the station. If such a plan, after fair trial, produces a loss to the company out of proportion to the public convenience, then abandonment should be allowed.

Decided April 22, 1919.

Appearances:

W. A. Cole, Solicitor Boston and Maine Railroad, North Station, Boston, Mass., for petitioner.

McKelvey & Stenacher (by Mr. Stenacher), Saratoga Springs, for patrons of Wayville station.

John J. Mackrell, 5 State street, Troy, and *Abbott H. Jones*, 10 State street, Troy, for patrons of Reynolds station.

FENNELL, Commissioner:

The Director General of Railroads petitioned that the railroad stations at Wayville and Reynolds on the Boston and Maine Railroad be discontinued and closed, on the ground that the amount of business being transacted at the stations was so small that such closing would be in the public interest.

There has been an agency station at Wayville for more than twenty years. It is on the Saratoga branch, about nine miles north of Mechanicville and ten miles south of Saratoga Springs. It is the only agency station between those points.

The business of the station for the year ended October 31, 1918, amounted to \$4357.39. About twenty 40-quart cans of milk are shipped daily, amounting to substantially 250,000 quarts a year. For the year ended with August, 1916, shipments from this station totalled 2,217,849 pounds. The station has a post office with a rural delivery route starting from it.

The agent was formerly paid \$1.45 per day. On October 1, 1918, his wages had reached \$3.62 a day. The application to discontinue this station was filed October 31, 1918. In January, 1919, his wages were reduced to \$2.02 a day, where they still remain.

There has been an agency station at Reynolds for more than thirty years.

It is on the Fitchburg Division, about five miles west of Schaghticoke and three miles east of Mechanicville.

The business of the station for 1917 amounted to \$2898.34, and for 1918 to \$1788.84. It was testified that the average business for ten years was about \$3000 per year. In one year it was about \$40,000, due to shipments of barge canal construction material, but as this business was clearly a special demand that will not occur again it was not considered in arriving at the above average. About fifteen 40-quart cans of milk are shipped daily, amounting to substantially 200,000 quarts a year.

In 1916 the station agent was paid \$2.25 per day for thirty-day month, or \$67.50 per month. In January, 1918, his wages had grown to \$95 per month. In October, 1918, to \$190.96 per month. On October 31, 1918, this application was filed. Later on the agent was reduced to \$4.48 a day, for a strictly eight-hour a day and no Sundays, making \$116.48 per month, or \$1400 a year.

Many witnesses were sworn, and it was shown that while the stations did only the amount of business above mentioned they constituted a public convenience to many shippers. The problem to be solved in these cases is not whether the stations are so expensive that the company ought not to be burdened with their upkeep, but whether some station arrangements can be made that will reasonably take care of the business offered and still not make too great a loss. The railroad should, in each instance, provide the most economical plan for conducting the station business. If the most economical plan requires a greater expenditure than the

public convenience reasonably warrants, then discontinuance should be ordered. The system in use at these two stations can hardly be so regarded. In the meantime, and until such plan is adopted and tried, the petition herein should be denied.

An order has been made accordingly.

Chairman Hill and Commissioners Irvine and Barhite concur; Commissioner Kellogg not present.

Proposed schedules of rates fixed by IROQUOIS NATURAL GAS COMPANY to take effect January 1, 1918. Order to show cause. [Case No. 6282.]

In the Matter of the Complaint of LOUIS P. FUHRMANN, as Mayor of Buffalo, *against* IROQUOIS NATURAL GAS COMPANY as to proposed increase in price of natural gas. [Case No. 6318.]

In a gas rate case the burden of proof to establish the amount of "capital actually expended" by the corporation is not sustained by evidence which is confined to reproduction value where evidence of actual cost and investment is available.

A natural gas company in possession of what are known as gas leases will not be allowed to capitalize such leases in order to increase its apparent capital upon which rates are to be based.

The Federal income tax will not be allowed as a deduction from income in determining the return on investment of a public service corporation.

Decided April 24, 1919.

Appearances:

George E. Pierce, Esq., City Attorney, and *Messrs. Frederick C. Rupp* and *Herbert A. Hickman*, Assistant Corporation Counsel, for the City of Buffalo.

Hon. Henry W. Hill, specially, for Buffalo Restaurant Association.

Hon. Ross Graves in person.

S. Jay Ohart, Esq., attorney for Village of Depew.

B. D. Jackson, Esq., attorney for the Village of Lancaster.

Louis L. Thrasher, Esq., counsel for the Village of Lancaster.

Hon. Daniel J. Kenefick counsel for Iroquois Natural Gas Company.

HILL, Chairman:

These are two proceedings: one arising on a complaint filed by Louis P. Fuhrmann as Mayor of the City of Buffalo

against certain tariff rates filed November 30, 1917, by the Iroquois Natural Gas Company; and the other a proceeding initiated by the Commission by an order to show cause. Both proceedings have the same object, which is to test the reasonableness of an increase in the price of natural gas in the city of Buffalo. The price prior to the filing of the schedule was 32 cents per M cubic feet, with a discount of 2 cents for prompt payment, making the net rate 30 cents. The increase is 5 cents for the consumption not exceeding forty M cubic feet in any one month, and 10 cents per M cubic feet for amounts in excess of that named. By reason of the advanced price for larger use, it is estimated that the net increase is about 5.436 cents per M. It will be noted that the new schedule is peculiar in that a higher price is charged for large consumption than for small consumption, the explanation being that the demand exceeds the ability of the company to supply the gas in practicable volume so as to give a satisfactory service, and the aim of the company evidently is to encourage economy in the use of the gas which is supplied.

HISTORICAL

For convenience, the Iroquois Natural Gas Company will be referred to as the Iroquois Company, and the United Natural Gas Company of Pennsylvania will be called the United Company. Both corporations are engaged in the production and distribution of natural gas. In the year 1918 the Iroquois Company distributed about thirteen million cubic feet per day on the average in its territory in Western New York, which extends from the Pennsylvania line northerly to and including the city of Buffalo, that city having a population of about half a million people. The number of consumers in Buffalo is about eighty thousand. Of the total output of the Iroquois Company, the percentage taken by these Buffalo consumers is about 85 per cent. The company was organized in 1912, taking over all the properties which the United Company then owned within the State of

New York and certain relatively small gas companies in the immediate vicinity of Buffalo. It also took over the Buffalo Natural Gas Fuel Company which had previously been operating in Buffalo as the selling and collecting agent of the United Company above mentioned.

The United Company was organized in 1886. The Natural Gas Trust, immediately upon the organization of the United Company and the Buffalo Natural Gas Fuel Company, acquired the ownership of all the capital stock of both companies. It was at this time that gas in Pennsylvania was first transported to the city of Buffalo and vicinity. The production and transportation to the city line of Buffalo from Pennsylvania was handled and controlled by the United Company, the Buffalo Company operating merely as a selling agent of the United and confining its operations to the city of Buffalo. In 1902 the National Fuel Gas Company, a New Jersey corporation, was organized to operate as a holding company, and succeeded the Natural Gas Trust in the ownership of the United Company and the Buffalo Natural Gas Fuel Company. At present the United Company and the Iroquois Company may be said to be sister operating companies, all of the capital stocks of both being owned by the National Fuel Gas Company. The amount of gas produced by the Iroquois Company is small when compared to its sales, notwithstanding its acquisition of the gas territory lying within New York state formerly owned by the United Company, and it depends upon the United Company for 76 per cent of the gas which it sells to its customers, following in this respect the practice of the Buffalo Natural Gas Fuel Company up to the time it was taken over by the Iroquois Company. The United Company in turn buys about one-fifth of the gas it turns over to the Iroquois Company from the Peoples Natural Gas Company of Pittsburgh.

The arrangement between the United Company and the Iroquois Company for the supply of this large quantity of

gas is not that of purchase and sale but provides for the delivery of the gas at the state line, the Iroquois Company to account to the United Company for all of its receipts except a certain percentage which it retains for its services as distributing agent. At about the time of the increase in the Iroquois schedule in Buffalo this percentage was reduced by arrangement between the companies to such a point that instead of receiving 21 cents per M cubic feet, as the United had been doing, leaving 9 cents to the Iroquois Company for its percentage, its returns from this gas were increased to 26 cents per M cubic feet; and it will be observed that this increase is in approximately the same proportion as the increase in price demanded of consumers by the Iroquois Company under its new schedules.

At the time of the organization of the Iroquois Company in 1912 under the laws of the State of New York, such organization was subject to the jurisdiction of the Public Service Commission of that State, and that Commission had the power and it was its duty to inquire into and supervise and regulate the capitalization. The necessary investigation was entered upon by that Commission, and before it was completed it was arranged between the officials of the company and the Commission that further investigation should be suspended; and that the company should be allowed to capitalize at the desired figure of \$10,000,000, and to issue in payment for the properties to be taken over about \$8,000,000, upon its entering into a stipulation with the Public Service Commission which would safeguard the public in future rate proceedings against any excess in the amount of capital stock issued over the value of the property capitalized; and inasmuch as this stipulation plays a very important part in the disposition of this case, it is herein below inserted verbatim, together with a parallel column in which, for greater convenience, is stated what I consider to be the legal effect of each paragraph with respect to this case.

It is obvious that the reason for making this stipulation was to avoid a long and tedious investigation of the values of the properties taken over from the different companies, which would naturally consume a great deal of time. The purpose of the Commission seemed to be to handle the matter in a practical way, and to treat the certificate which it was required by law to make, namely, that the capitalization allowed was required for the purposes of the corporation, as a formality, by reason of the making of the stipulation. Thereupon the incorporation was completed with a capital stock of \$10,000,000, of which approximately \$8,000,000 was issued for the properties acquired. Since that time there has been no change in this capital stock issue.

THE STIPULATION

The following is the text of the stipulation referred to so far as pertinent to these proceedings:

"2. That in any proceeding to fix the rate or rates which shall be charged as a maximum, or otherwise, for natural gas supplied to customers within the cities, towns and villages now served by the companies whose properties are to be transferred to the Iroquois Natural Gas Company in this proceeding, hereafter had before the Public Service Commission, Second District, or other lawful authority, involving the reasonableness of the rate charged for natural gas in any of the towns, villages and cities now served or supplied by any of the persons or corporations named in this order within the State of New York, the burden of proof shall be upon said Iroquois Natural Gas Company to establish affirmatively that any price in

In any rate proceeding, burden is upon Iroquois Company to establish affirmatively necessity for any increase.

In default of meeting burden, Commission may without other proof fix the now existing rate as the lawful rate.

excess of 32 cents gross and 30 cents net for each 1000 cubic feet of natural gas is just and reasonable; and in default of evidence fairly and reasonably meeting such burden, the Commission or other lawful authority may without other proof or evidence fix and determine the just and reasonable rate for natural gas in said municipalities at 32 cents gross and 30 cents net for each 1000 cubic feet."

"3. That in any proceeding to fix the rates, maximum or otherwise, for natural gas to be charged by said Iroquois Natural Gas Company, hereafter had before said Public Service Commission or other lawful authority, the price paid by said Iroquois Natural Gas Company for natural gas to any other corporation or corporations shall be open to inquiry and the burden of proof shall be upon the said Iroquois Natural Gas Company to establish affirmatively that the price so paid by it is just and reasonable, or that the contract was made in good faith with a corporation by which it is not controlled and upon the best terms that the Iroquois Natural Gas Company could obtain."

"5. That in any investigation had pursuant to the paragraph hereof numbered 3, which shall relate to or involve the reasonableness of the price paid by the Iroquois Natural Gas Company to the United Natural Gas Company for gas, the books, papers,

In any rate proceeding, price paid by Iroquois Company to United Company shall be open to inquiry, with burden of proof upon Iroquois Company to establish affirmatively (1) that price is just and reasonable, or (2) that contract was made in good faith with corporation by which Iroquois is not controlled and upon the best terms Iroquois can obtain.

In any rate case involving reasonableness of price paid by Iroquois Company to United Company, books and physical property of United Company shall be open to inspection by the Commission in the same manner as though United Company and its affairs

records and physical property of the United Natural Gas Company shall be open to full inspection by this Commission, its engineers and accountants, in precisely the same manner as though said corporation and its affairs were under the supervision and jurisdiction of this Commission." were under the supervision and jurisdiction of the Commission.

I assume the effect of these provisions to be as respects the pending proceedings —

First: The burden is upon the Iroquois Company to establish affirmatively that the demanded increase in rates is just and reasonable.

Second: That the reasonableness of the increased price proposed to be paid by the Iroquois Company to the United Company is open to inquiry.

Third: That it is incumbent upon the Iroquois Company to establish affirmatively that the increased price paid by it to the United Company is just and reasonable.

Fourth: That the alternative of showing that the contract was made in good faith by a corporation by which the Iroquois Company is not controlled does not enter into consideration because of the admitted fact that while it is not controlled by the United Company both it and the United Company are in the common ownership of a third company.

Fifth: That the books and physical property of the United Company are the legitimate subjects of inspection by the Commission, and the facts relative thereto are to be considered by the Commission for the same purpose and with the same effect as though the rates had been established by that company instead of the Iroquois Company: that is to say, that the necessity of an increased price to the United Company is to be determined by the consideration of the return it would be entitled to receive if it were a gas corporation or electrical corporation organized under the laws of the State of New York, which return is governed by the

following language used in section 73 of the Public Service Commissions Law, namely:

In determining the price to be charged for gas or electricity the Commission may consider all facts which in its judgment have any bearing upon a proper determination of the question . . . with due regard, among other things, to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies.

We are not unobservant of the claim by respondent's counsel that the Commission was without power to bind the Iroquois Company by this stipulation. We assume, however, that it is entitled to be treated on the same basis as a stipulation made in open court, to which class of stipulations the courts have always accorded the highest sanctity on the grounds of public policy. Therefore, for the purposes of these proceedings, the stipulation must be considered as of full force and effect.

Frequent reference is made in respondent's brief to the formal certificate which was made by the Commission in 1912 to the effect that the issue of eight millions of stock by the Iroquois Company in consideration for the properties taken over was based upon evidence and was binding on the Commission as a finding that at that time it considered the property taken over to represent that value. This I think is disingenuous, as it is perfectly clear that the whole object of the stipulation was to leave the question of value of the property open for future inquiry. If that were not the object, then it is difficult to see what object there could have been.

One question which gave rise to much argument in the trial of this proceeding was whether or not, by reason of paragraph 5 of the stipulation, the books and physical property of the United Company were to be open to an inspection by the Commission with respect to showing the actual investment which the United Company had in the property which was turned over by that company to the Iroquois Com-

pany in 1912. This argument arose from the refusal of the United Company to give the Commission access to its books so far as they related to those costs, it claiming that those costs have nothing to do with the reasonableness of the price paid by the Iroquois Company to the United Company for gas, and that the paragraph in question relates only to those facts which bear upon the reasonableness of such price. While this is probably debatable, it is not important in view of the conclusions hereinafter reached.

THE ISSUES

The issues in the case relate to the rate of return which these companies are entitled to receive through the medium of the Iroquois Company's price of gas in the city of Buffalo. This rate of return is to be computed on the value of the property devoted by the respective companies to the public service and used and useful in such service. The establishment of these values involves the consideration of the fair value of the property of the Iroquois Company and also that of the United Company. Upon both of these questions the respondent was obliged to assume and did assume the burden of proof. The first question is whether or not the character of the evidence furnished by the respondent is such as fairly to meet the requirements of the stipulation *prima facie*, or in other words, whether or not it is sufficient to establish a *prima facie* case in support of the new rates. If the evidence is not of this character and if a *prima facie* case has not been established, then it seems to be the duty of the Commission under the terms of paragraph 2 of the stipulation arbitrarily to fix the rate at the amount originally charged.

If we find that within the intent of the stipulation the evidence furnished by the respondent has established its contentions as to the value of the property involved, the next question is whether or not upon the whole evidence in the case the previously existing rates, namely 32-30 cents per M cubic feet, are sufficient to yield an adequate return.

EVIDENCE OF REPRODUCTION COSTS

It will be observed that with regard to large portions of property all of the evidence of values produced by the respondent was opinion evidence of reproduction costs, unaccompanied by evidence of actual costs or investment. On the contrary, the latter class of facts was strenuously withheld from the record by the respondent. It did not appear that records of actual costs were not available in the respondent's books, but on the contrary the unquestioned inference from the record is that they were and are available. The position of respondent is that under these circumstances it had the right in meeting the burden of proof to confine its proof to opinion evidence of reproduction costs. With regard to the gas lands, or so called intangibles, the motive for this position is obvious, because actual costs would not include the increased value placed on such lands by the United Company as from time to time they were transferred from the unoperated to the operated property account. A reference to the property account discloses that unoperated leaseholds carried at \$5 per acre, itself an arbitrary figure, were increased tenfold when treated as operated property. This increase would not appear anywhere in the cost account. Aside from this particular consideration, however, I do not consider that under the circumstances disclosed the evidence of reproductive value furnished by respondent fairly supports its burden of proof so as to establish even a *prima facie* valuation. I do not understand that the Commission is bound to consider evidence of this character standing alone, at least where the actual costs or other supporting facts are available and are not produced. Such qualified sanction as the courts have given to the reproduction method of establishing value in rate cases is generally found to include this condition. The authorities mostly relied on as a justification for this class of evidence are *Smyth v. Ames* (169 U. S. 466), and the *Minnesota* rate cases. In the *Ames* case, Mr. Justice Harlan, quoting from an earlier case, said:

Each case must depend upon its special facts and when a court . . . is required to determine . . . rates . . . its duty is to take into consideration the interest both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered.

And he added —

We hold . . . that the basis of all calculations as to the reasonableness of rates to be charged . . . must be the fair value of the property being used by it for the convenience of the public, and in order to ascertain that value the original cost of construction, the amount expended in permanent improvements, the amount of market value of its bonds and stock, *the present as compared with the original cost of construction*, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses are all matters for consideration and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. [Italics mine.]

And in the *Minnesota* rate cases Mr. Justice Hughes said:

The cost of reproduction method is of service in ascertaining the present value of the plant when it is reasonably applied and when the cost of reproducing the property may be ascertained with a proper degree of certainty.

The California Commission has determined that "the reproduction cost method of valuation may be adopted in a rate case where no complete or accurate record of either the original cost or actual investment . . . exists". (*Re San Jose Water Co.*, P. U. R. 1915 E, 706.) And the Wisconsin Commission has said: "Neither the cost of reproducing the existing plant or system nor replacing an existing system or plant by an equivalent one is final as determining the cost new or present value. . . . but both may be of evidential value in determining the actual fair value thereof." (*Re Janesville Water Co.*, P. U. R. 1915 A, 178.) And in the *Clarksburg* case the West Virginia Commission said: "The actual investment and reproduction cost should be considered and applied like all the other evidence of value, whenever they will in any way aid the rate-making body in arriving at a fair value."

I think it is clear from all the cases that the reasonable application of the rule is that the actual investment should be considered where it is available, and the reproduction cost may be considered whenever it will aid the rate-making body in arriving at a fair value for the property. It is of the utmost importance in every case to be able to consider facts and actual costs as distinguished from theories and speculative or constructive values. The determination of a proper valuation in a rate case is generally a matter of great difficulty, and where actual facts and costs are susceptible of proof it would seem to be of first importance that they should be supplied. The unreliability of reproduction values without the check upon them which is made available by evidence of facts is illustrated in the present case, where according to respondent's brief the margin of proof as to the value of the Iroquois property extends all the way from \$9,364,000 to about \$15,000,000. It is evident from this wide diversity that the figures must be based largely on conjecture. Apparently, the item of eight millions claimed by the respondent as the investment in the Iroquois Company in 1912 has thus expanded with the aid of a comparatively small additional investment to about fifteen millions. Surely such evidence as this, based so far as the leases are concerned upon expert opinion, can not properly be accepted as a basis for a new rate.

It seems clear from these and generally from all the authorities on the subject that evidence of reproduction value is only one factor in a valuation and that where actual cost or investment can also be produced it should be. The wisdom of this view is supported by the daily experience of the Commission in its consideration of valuations for rate-making purposes. As a method of establishing values in rate cases, reproduction cost first came into prominence by reason of the qualified sanction apparently given it by Mr. Justice Harlan in *Smyth v. Ames*. It is interesting to note that that was a period of low reproduction costs and the object

was to compel the lowering of railroad rates by basing the rate of return on reproduction value without regard to the much higher original cost and investment. It is observable that the court did not sustain this view, but held that the reconstruction cost was but one element of the proper proof. The soundness of this holding is evident when we consider that the conditions are now reversed and that in the current period of unnaturally swollen war costs we find the concept of valuation then advanced returning to plague its inventors and made use of by the owners of quasi-public properties to build up constructive values for rate purposes largely in excess of actual costs of the normal pre-war period. Either use of these purely theoretical and highly speculative computations is obviously potential with great danger of error and injustice.

In any aspect of the case, I can not see that the respondent is entitled to the increase demanded. The question largely depends upon whether or not the increase of five cents per thousand in the price paid by the Iroquois Company to the United Company is required by the latter company in order to yield a fair return upon its invested capital. In examining the affairs of that company we find at the outset that its capital and operating accounts have been kept in a manner radically different from those of other public utilities, producing results widely at variance with them. In the financial accounts of railroads, electric light companies, manufactured gas concerns, and telephone companies, as well as those of manufacturing and other commercial concerns not under state regulation, the expenditures originally made for fixed capital are entered in the capital account, to which all additions are from time to time debited and all withdrawals credited, and operating accounts are kept by crediting all revenues on the one side and charging all expenses and depreciation on the other; but it seems that both the United Company and the constituent companies of the Iroquois Company conducted their financial accounts

quite differently. This fundamental difference in method is described by the witness Sartorius, S.M. 2285, who states that "When a leasehold is first acquired it is placed in a division known as unoperated acreage, and when drilling followed and a producing well was developed that acreage was put in the operated class and a value per acre established on a basis of production over a period of time".

The effect of this difference in method upon the property accounts of the company is of course profound. It amounts to capitalizing the leases as rapidly as they are developed. Thus we have two profit accounts: (1) a primary account in which so called profits earned by the company in its drilling and development department, instead of being credited to income, are carried to capital account, where they form a basis for increased capitalization and are used to justify higher rates; and (2) the ordinary operating profits or revenues, which may be termed a secondary profit or income account, but which alone is treated as the real income for rate purposes.

The question of the admissibility of these financial methods has received attention in other recent natural gas rate cases determined by the public service commissions of other States.

In the case of *Northeastern Oil and Gas Co.* (Ohio), P. U. R. 1916 D, 693, the wells were valued *in the absence of cost records* by letting their assumed cost absorb the cost of the dry holes. With respect to capitalizing the leases or *acreage* the Commission said: "It is extremely difficult to find any fair basis on which to calculate the value of gas leases and especially those covering undeveloped territory. However, the commission is of the opinion that whatever sums are necessarily expended for acquiring and holding leases upon a sufficient amount of territory to meet present demands and to make reasonable provision for the future should be treated as an operating expense"; and any item in excess of actual cost was excluded, as was also a theoretical item of value for right of way. The Commission's engi-

neer, whose report was adopted and followed by the commission, said, "It is impossible to give a producing well a reproductive value". The leases were not allowed to be capitalized.

Another case was determined by the Ohio commission in the following year, *Ashtabula Gas Co.* (1917 D, 790), wherein the commission held (p. 803) that "the leases should not be capitalized but that a sufficient amount should be allowed as an operating expense to provide for acquiring and holding leases to safeguard the future and to pay lease and well rentals"; and a small sum was allowed for that purpose.

In the *Clarksburg Light & Heat Co.* case (W. Va.), P. U. R. 1917 A, 577, a valuation was permitted of the developed wells and undeveloped acreage — but it is noticeable that in that case the question of the propriety of the item was not raised so that the question was apparently not at issue.

In the *Osage and Oklahoma* case, determined by the Oklahoma commission, reported *id.* p. 426, the Ohio cases were followed, the commission saying at page 447, after referring to the *Clarksburg* case, "In this case, however, the commission has assigned no value to the leases of the company and no separate value to the gas produced except as a factor of operating expense".

We think the authorities cited discredit the accounting methods adopted by the respondent in the respect mentioned. It would seem that on principle as well as authority such methods are inconsistent with the tenets of rate making by public service commissions as generally sanctioned by the courts. The expenditure of the money of the corporation for gas leases is of course a legitimate capital expenditure; but to swell the capital account by reason of gas produced by the corporation on such leases would seem to be inadmissible.

Without regard to the foregoing criticism, however, and accepting the company's own method of accounting, we find that its rate of return upon its claimed capital from the inception of the company in 1886 to and including the year 1917, that being the last year for which the figures are available, was, according to the results reported by the Commission's expert, 17.03 per cent. This included two large stock dividends. And it is evident from the report that the capital account has been largely built up from surplus earnings. It is also notable that the earnings for the final three years of the period were large and show an upward curve, being respectively 11.04, 13.18, and 14.54 per cent. To be sure these results are not fully accepted by the respondent's counsel, who insists in his brief that the rate for 1917 did not exceed 11.75, and that the average during the company's life did not exceed 13.40. But even these admitted rates of earnings are in excess of those which have been determined to be fair in other recent natural gas cases. I refer to the *Clarksburg* case *supra*, cited on another point by the respondent, where 8 per cent was determined upon as a fair rate; the case of *Landon v. Public Utility Commission* of Kansas, in which the commission allowed only 6 per cent, which was increased by the Federal Court to 8 per cent, 234 Fed. 152; and the *Ashtabula* case *supra*, where 10 per cent was allowed. It will be noticed that the return allowed by the statute is an average return, and this provision admits of lean years being averaged with those yielding more than the required rate.

In all recent rate cases before the Commission, consideration has necessarily been given to the largely increased labor and material costs brought about by war conditions. From an examination of the operating expense sheet of the respondent and of the United Company it will be observed that natural gas companies, by reason of the character of their business, are largely immune from those elements of increased war costs which have so vitally affected other classes of public

utility corporations. The principal items are coal, labor oil, and steel. These do not largely affect a natural gas company. The Iroquois Company has discontinued extensions of its supply lines so that expenditures for pipe are relatively small to those required of a company which is not fully established; coal does not enter into its operating costs at all, and labor is not one of its important items.

The Commission feels also that public service corporations must not expect to be immune fully from the fluctuations of income which affect all of the elements of the community in times of upheaval. To be sure they can not and ought not to be required to furnish service at confiscatory rates, but ordinary inequalities of return for passing periods should not be considered too seriously.

Referring again to the rates of return of the United Company during the past, the company claims that its contract price with Peoples Company of Pittsburgh for about one-fifth of its supply for Buffalo has recently been increased, but that item is not sufficiently large to reduce its conceded level of earnings below a fair rate as adjudicated in the determinations to which I have referred.

The Iroquois Company received in 1917 on the 30 cent rate an income applicable to dividends of \$860,893. The company claims that its sales in that year were above normal, and shows a falling off in 1918 equal to about \$50,000 of gross revenue.

The property of the company was examined in this proceeding by the Commission's representative who reported a value of \$5,451,424.50. This result differed from the company's book figures by the rejection of about \$2,500,000 from the acreage item, which he considered unjustified. On the old rates, therefore, accepting Mr. Henderson's valuation, the income sheet for the coming year would result substantially as follows:

Income for dividends, 1917.....	\$860,893
Less allowance for reduced sales.....	50,000
	<hr/>
	\$810,000
Investment, 1912 (Henderson's figures).....	\$5,451,424.50
Additions to property since that time.....	1,140,061.12
Working capital	745,000.00
	<hr/>
Total investment and working capital.....	\$7,336,485.62
Rate of return.....	10.4%

This computation disregards certain items which might be used to vary the result. The company, while claiming that its property values should not be reduced by reason of depreciation or obsolescence covering the period since 1912, wishes to increase its amortization charge from this time forward largely because of a possible giving out of the gas supply in the future. Surely if the life is to be amortized, the entire amortization should not be concentrated on the remaining period of life, but should be spread over the entire life both past and future. But this scale of amortization is itself purely theoretical and has been adopted only since the beginning of this proceeding. It is not fair to assume this theoretical death, and that when it occurs the company's pipe system must be scrapped. Even now the company is owned in common with the Buffalo illuminating gas system and is planning for a mixed gas in the future.

It also ignores Tyng's estimate of \$45,469 for increased taxes resulting from the Federal income tax which the company claims as a deduction from income. I think this tax can not be considered as a deduction, like property and franchise taxes, before striking a balance which will represent the net income or return on investment. The income tax is a tax not on property or on earnings, but on the income as such. In intent it is not a tax on the corporation or its property, but on the income which is transmitted to its final recipient, the stockholder, and is paid at the source purely as a matter of expediency in its collection. This is obvious because the dividend in the hands of the recipient is relieved from the tax upon it being shown that it was paid at the source and not otherwise. If it were paid by the stockholder

he could not transfer the burden to the consumer and thus spread it over the general community, nor was it the intent of the statute that he should be allowed so to do; but if the corporation is allowed to deduct it as an expense before arriving at the net income or rate of return, the statutory intent in this respect will be defeated.

The respondent's counsel urges that the United Company may, if it is dissatisfied with the Buffalo price, withdraw its supply entirely from the Iroquois Company and thus cut off all supply from the city of Buffalo. Whatever force there may be in this suggestion, I do not see that it is one which the Commission can allow to influence its determination. It would seem to be purely a question of policy for the consideration of the consumers of gas in that city.

Commissioners Irvine and Fennell concur in opinion of Hill, Chairman; Commissioner Kellogg taking no part.

OPINION BY COMMISSIONER BARHITE

Proposed schedules of rates fixed by IROQUOIS NATURAL GAS COMPANY to take effect January 1, 1918. Order to show cause. [Case No. 6282.]

In the Matter of the Complaint of LOUIS P. FUHRMANN, as Mayor of Buffalo, *against* IROQUOIS NATURAL GAS COMPANY as to proposed increase in price of natural gas. [Case No. 6318.]

When a natural gas company stipulates, as one of the conditions upon which an order authorizing it to purchase several properties is made by a Public Service Commission, that in any rate proceeding it will assume the burden of proof and establish affirmatively that new proposed rates are just and reasonable, such stipulation is binding upon the company.

Whenever a natural gas company stipulates, that if in any proceeding to determine rates the reasonableness of the price paid by one company to another for gas is in question, the books, records, and papers of the company shall be open to full inspection by the Commission, it is not a compliance with the terms of that stipulation for the company to refuse to allow its books to be examined by the Commission for information desired by the Commission, and then to offer other evidence, acceptable to the company, upon the point concerning which information was desired from the books.

The determination of the value of the property of a company should not be based entirely upon reconstruction cost when it is possible to ascertain the amount of the original investment.

When a holding company owns or controls one hundred per cent of the stock of a public service corporation and the latter company desires an increase in rates, the inquiry need not be limited to an examination of the financial affairs of that company, but may include an investigation into the business of the holding company to determine the financial results of its relation with the public service corporation.

An annual sum sufficient to compensate after an estimated period for the entire value of a plant at the end of its life should not be allowed in a rate charge when it appears that thereafter the plant may be adapted to other purposes which will continue to yield revenue to the stockholders.

138 PUBLIC SERVICE COMMISSION, SECOND DISTRICT

In fixing the rate of a public service corporation the character of the service should be considered, and the public should not be required to pay more than the services rendered to it are reasonably worth.

Decided April 24, 1919.

Appearances:

George E. Pierce, Esq., City Attorney, and *Messrs. Frederick C. Rupp* and *Herbert A. Hickman*, Assistant Corporation Counsel, for the City of Buffalo.

Hon. Henry W. Hill, specially, for Buffalo Restaurant Association.

Hon. Ross Graves in person.

S. Jay Ohart, Esq., attorney for Village of Depew.

B. D. Jackson, Esq., attorney for the Village of Lancaster.

Louis L. Thrasher, Esq., counsel for the Village of Lancaster.

Hon. Daniel J. Kenefick counsel for Iroquois Natural Gas Company.

BARHITE, Commissioner:

Case No. 6282 is a proceeding instituted by this Commission upon its own initiative wherein the Commission seeks by means of an order to show cause to determine whether a schedule for increased rates filed by the Iroquois Natural Gas Company is just and reasonable and not in violation of any provision of law. Soon after the Commission had begun its proceeding, the then Mayor of Buffalo filed a complaint against the same schedule (case No. 6318) and asked for a review by the Commission. As the object of the two proceedings is the same they were consolidated with the consent of the parties, and the evidence taken and the proceedings had apply to both cases. Complaints were also filed by other parties, but as a determination of the two cases now under consideration must be applicable to all other proceedings brought for a determination as to the validity of the schedule of rates filed by the company, it will be unnecessary to consider those cases.

After the schedules for increased rates had been filed by the company and pending the determination of the proceedings based upon the order to show cause and upon the complaint of the Mayor, this Commission made an order providing that the rates then in force should continue during the pendency of the proceeding, the basis of such order being an order made by the Commission in 1912, and a stipulation of the company filed in pursuance of such order at the time the company began business, it being the opinion of the Commission that the schedules for increased rates were a violation of said order and said stipulation. The Commission in support of its order began a proceeding in the Supreme Court for its enforcement. The City of Buffalo was made a party to this proceeding. The Court made its judgment to the effect that the company under its stipulation could not make its proposed increased rates effective until it had shown that they were reasonable and just. The company appealed from the judgment, and it was reversed by the Appellate Division which held that the company had the right to file its schedules and put in force its new rates notwithstanding the order of the Commission and the stipulation of the company made in 1912. The determination of the Appellate Division has been affirmed by the Court of Appeals. It may be said that the company voluntarily at different times put off the effective date of the schedule of increased rates at the request of the Commission and the City of Buffalo, the times amounting in the aggregate to four months.

The company also made application to the Supreme Court for a writ of prohibition to prevent this Commission from proceeding with the two cases now under consideration, upon the ground that the company was engaged in business which was of an interstate character over which the Commission has no jurisdiction, but the writ was denied.

With the above brief history of the proceedings which have been had in the matters under review, we will proceed to a

discussion of the evidence and the rules of law applicable thereto.

The Iroquois Natural Gas Company, as its name indicates, is engaged in the business of producing, distributing, and selling natural gas to different cities and villages within the State of New York. It is in evidence that in 1917, the last year in which the figures are available, that it disposed of 13,997,960,000 cubic feet of its product. Seventy-six and twenty-seven hundredths of one per cent of this gas was bought from the United Natural Gas Company, a Pennsylvania corporation with its principal office in that State. Part of the balance was procured from wells owned by the company in the State of New York, and part was purchased within the same State, but that fact is not important.

The company is a domestic corporation organized May 23, 1911, with a present authorized capital of ten million dollars. On June 5, 1912, the Commission made an order in effect authorizing the company to begin business, and among other things to acquire the works, franchises, and systems of seven companies and of an individual, and to issue its capital stock in payment therefor. Under this order the company issued \$8,027,505 of its capital stock in payment of the various properties purchased. In October of the same year the company was authorized to issue \$5000 of its capital stock for cash in payment of organization taxes. The total capital stock issued thus became \$8,032,505, and has remained at the same figure to date. The company has not issued any bonds and owes no debts except those presumably of an ordinary business nature.

As a part of the property acquired under this order, the company purchased all of the works, system, franchises, and property belonging to the United Natural Gas Company within the State of New York, and paid therefor with its capital stock to the amount par value of five million five hundred eighty-nine thousand five hundred and five dollars (\$5,589,505). The United Company thus became for a

time the controlling factor in the affairs of the Iroquois Company, not alone because of stock control but as the source from which the Iroquois has since it began business obtained more than three-quarters of its supply of gas. The disposition of the stock of the Iroquois Company obtained by the United Company may be traced. By its report filed with the Commission for the last six months of 1912, it appears that the Iroquois Company had three stockholders, namely, The Buffalo Natural Gas Fuel Company, Coal and Iron Exchange, Buffalo, New York, 17,500 shares: this stock represents the purchase price by the Iroquois Company from the Buffalo Natural Gas Fuel Company of property under the order of June 5, 1912; National Fuel Gas Company of 26 Broadway, New York, 6930 shares: how the last stock was obtained does not appear and probably is not of much importance; United Natural Gas Company, 55,895 shares: this last amount of stock was obtained from the Iroquois Company pursuant to the order of June 5th and was the purchase price of the property sold by the United Company to the Iroquois. During the year 1913 the stock ownership changed. By the report of that year it appears that at the end of the year the stockholders had been reduced in number to two: National Fuel Gas Company, 65,930 shares; and the United Natural Gas Company, 14,395 shares. The same ownership continues as appears by all the reports filed. In fact, it is evident that the National Fuel Gas Company has complete control not only of the Iroquois Company but also of the United Company. An officer of the National Fuel Gas Company was sworn, and he testified that that company either owned or controlled 100 per cent of the stock of the Iroquois Company and of the United Company; and several of the annual reports of the National Fuel Gas Company in evidence are to the same effect.

In other words, the holding company absolutely controls not alone the Iroquois Company which distributes the gas in New York state, but also the Pennsylvania company which supplies the gas to the distributing company under contract.

At the outset of the case the Iroquois Company was required to produce its proof. This ruling was based upon that clause in the order and stipulation noted above, which provides that in any rate proceeding the burden of proof shall be upon the Iroquois Company to establish affirmatively that any price in excess of thirty-two cents gross and thirty cents net for each one thousand cubic feet of gas is just and reasonable. The company did not deny the stipulation but denied its legality, and took exception to the ruling that the company should first proceed with its proof. No legal reason has been advanced why the company should ignore its stipulation; and the order made by the Commission in 1912 expressly provides that the authorizations and consents given to the company were based upon certain express conditions, one of which was the stipulation to which we have referred and which was to be embodied in the order entered.

No reason is stated by the company in its answers why the increased rates are necessary except the general allegations that such rates will yield only a fair return upon the value of the property. It is true that in *People ex rei. N. Y. C. & H. R. R. Co. v. P. S. C.*, 215 N. Y. 241, it is held in a railroad case that the mere fact that the rate has been raised carries with it no presumption that it was not rightfully done, but in the present case the Commission had before it its own public records afterward submitted in evidence, namely, the annual reports of the Iroquois Company which show that on December 31, 1912, six months after it had begun business, it had accumulated a corporate surplus of \$183,205.05, which on the 31st day of December, 1917, had increased to \$1,912,539.32. The same reports show that during the years 1914, 1915, 1916, and 1917 dividends had been declared amounting in the aggregate to 25 per cent, requiring a total payment of \$2,008,125, which added to the accumulated surplus makes a profit of \$3,920,664.32 for five and one-half years, or a yearly average upon the capital

stock issued of over 8.87 per cent. There is a slight discrepancy between the amount of stock authorized by the order of 1912 and that named in the annual reports, but the difference is so small as to be of no consequence. It further appears from the evidence that the United Company is in reality one of the principals dealing with the City of Buffalo and the other customers of the Iroquois Company. The United Company furnishes over 76 per cent of the gas used by the Iroquois Company, and this gas is not sold to the Iroquois Company but is simply furnished to the Iroquois Company for distribution as agent of the United Company. In a contract between the two companies dated July 1, 1912, which had for its basis a supply of natural gas to be furnished by the United Company to the Iroquois Company, in the words of the contract "For sale and distribution to consumers for account of the United Company," it is clearly apparent that the United Company is the real principal. In a letter written by the president of the United Company to the president of the Iroquois Company, dated December 1, 1915, this language is used: "The third paragraph of the contract between the Iroquois Natural Gas Company and the United Natural Gas Company is modified so that the United Company will receive seventy per cent instead of sixty-six and two-thirds per cent as in said paragraph specified, and that the Iroquois Company will retain the balance of the net proceeds as its commissions." In a letter dated November 19, 1917, between the presidents of the two companies, appears this sentence: "The Iroquois Company is to pay the United Natural Gas Company out of the proceeds of the gas sold by the Iroquois Company for account of the United company, etc." The amended contract made between the United Company and the Iroquois Company on the 24th day of November, 1917, contains this clause: "The Iroquois Company is entitled to retain the balance of the net proceeds of the sale of gas as commissions for its services in transporting, selling, and distributing the gas for the United

Company." That there can be no doubt that the United Company is one of the principals in the dealings with the customers of the Iroquois, is well illustrated by the contracts and the communication between the officers of the companies. The evidence shows that the United Company, from and including the year 1886 to and including the year 1917, had paid in dividends an average of 17.55 per cent annually.

It was conceded upon the trial that the National Fuel Gas Company at the time of the consolidation in 1912 owned the stock of the United Company, and we have already called attention to the fact that the same company soon after the consolidation became the owner of the controlling interest in the stock of the Iroquois, and now and for some time has been in complete control of that company. The Iroquois Company and the United Company are but fingers upon the same hand, controlled by the same brain, and turn their profits into the same treasury. The career of the controlling company shows increasing prosperity. In 1913 its net earnings were \$2,737,811.98; in 1914, \$3,123,101.15; in 1915, \$3,263,140.71; in 1916, \$3,928,230.39; in 1917, \$4,446,495.14. At the end of 1914 its surplus was \$11,004,950.10, which increased at the end of 1917 to \$13,471,942.98. This success was achieved upon an actual capitalization of \$14,803,900 in 1914, which had increased in 1917 to \$18,489,825.

Regardless of the stipulation made by the Iroquois Company, can there be any doubt that the burden of proof is upon the Iroquois Company to show the necessity for increased rates?

Paragraph No. 3 of the order of 1912 relates to an investigation by the Public Service Commission or other lawful authority to fix the rates charged by the Iroquois Company. Paragraph No. 5 of the same order provides "that in any investigation had pursuant to the paragraph hereof numbered 3 which shall relate to or involve the reasonableness of the price paid by the Iroquois Natural Gas Company to

the United Natural Gas Company for gas, the books, papers, records, and physical property of the United Natural Gas Company shall be open to full inspection by this Commission, its engineers and accountants, in precisely the same manner as though said corporation and its officers were under the supervision and jurisdiction of this Commission". Certainly this investigation involves the reasonableness of the rates paid for gas by the Iroquois Company to the United Company, especially when we find that both of said companies are completely owned and controlled by one corporation which can place the burden where it pleases. In fact, the situation comes within the spirit if not within the letter of that part of the stipulation which provides that the burden of proof is upon the Iroquois Company to show that the contract was made in good faith "with a corporation by which it is not controlled".

It will be noticed that the part of the stipulation which we have quoted gives to the Commission *full* inspection of the books of the United Company in precisely the same manner as though that corporation and its affairs were under the supervision and jurisdiction of the Commission. The Commission has the right to use the books to obtain such information as it may deem necessary. The statute, section 72 of the Public Service Commissions Law, provides "in determining the price to be charged for gas or electricity the Commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint, and not within the allegations contained therein, with due regard among other things to a reasonable average return *upon capital actually expended*". It was pertinent to the inquiry and under the statute quoted was the duty of the Commission to determine the actual cost of the property transferred by the United Company to the Iroquois in 1912. The property had been capitalized by the Commission at that time at \$5,589,505, but the stipulation to which we have called atten-

tion provides "in any proceeding involving the reasonableness of any increase of such present rates neither the Commission, the city, nor the company shall be bound or prejudiced by the amount of capitalization herein allowed and accepted by the company, or the valuations herein testified to or proved". The Commission, in attempting to determine the cost of the property conveyed by the United Company to the Iroquois, was met by a flat refusal on the part of the United to allow its books to be examined for that purpose. The Commission was by the refusal of the United Company forced through its experts to build up in the best manner possible upon information obtained from various sources the value of the property in question, and the value thus obtained is severely criticized by the attorney for the Iroquois Company on the ground of its alleged inadequacy. An employee of the Commission was sent to the office of the United Company for the purpose of examining its books. The following is his testimony as to the reception which he met:

Q. In your examination of the United you were accorded access to their books in all except one particular, were you not?

A. Yes, sir.

Q. What particular was that?

A. We were refused access to particulars relating to the actual original cost of property which the United Natural Gas Company sold or delivered in any way to the Iroquois Natural Gas Company at the time the Iroquois Natural Gas Company was formed in 1912.

Later, when the same witness was under examination concerning a report which he had submitted in which there was an estimate of \$2,700,000 as the value of the property conveyed by the United to the Iroquois in 1912, he testified as follows:

Q. The original was approximately \$2,700,000. Do I understand from that that the original cost of all the property conveyed to the Iroquois by the United was \$2,700,000?

A. That is our estimate of what the original cost was. As stated earlier, we were refused access to the records of the company which would show what that original cost actually was.

Q. Did you ask for access to those records?

A. Yes, sir.

Q. And you were refused access?

A. Yes, sir. The officers of the company stated that in their opinion it was not covered by the stipulation entered into in 1912.

The above testimony was not disputed by the company.

The only person connected with the United Company who was interrogated concerning the refusal of the officers of the company to allow the representative of the Commission to examine the books was the treasurer. After stating that he did not know whether there was any request made to examine the books or records of New York state property, the following is found in the record:

Q. You do not mean to state then, Mr. ———, positively, that Mr. ——— did not have access to all of your books at Oil City?

A. I mean to say that they had access to all the books they asked me for.

Q. Yes, that is all?

A. Yes.

Q. What they were refused by the other officers of your company and its lawyers you do not know?

A. No, that I would not know.

The United Company deliberately prevented the Commission from obtaining positive information of that which it is directed by the statute to take into consideration in determining the rate to be paid for gas, namely "Capital actually expended". [Sec. 72, Public Service Commissions Law.] It is true that the representatives of the Commission were referred to the evidence given by witnesses called by the Iroquois Company for the purposes of the consolidation in 1912. In other words, there was a refusal to supply the evidence covered by the stipulation and an insistence upon furnishing such evidence as would be satisfactory to the respondent company. It can hardly be expected that the testimony of men called in 1912 for the purpose of showing the value of property transferred in return for stock of the Iroquois Company will satisfactorily take the place of book entries showing the actual cost, and the company seems to

have overlooked that part of the stipulation which provides that "in any proceeding involving the reasonableness of any increase of such present rates neither the Commission, the city, nor the company shall be bound or prejudiced by the amount of capitalization herein allowed and accepted by the company or the valuation herein testified to or proved".

The company did not attempt to give the actual cost of its property, but proved its value upon reproduction cost based upon the average price for the last five years, from 1913 to 1917 both inclusive. The figures were largely made by a consulting engineer who had had no previous experience in conducting a natural gas plant. It is further stated that an expert from Pittsburgh went over the lines and made estimates.

The following testimony of the expert will show the basis of his figures:

Q. Did you examine the books of the company to ascertain what these field lines actually cost the company?

A. There is no actual cost. We have the book figure which is the appraisal figure.

Q. Can't you tell the actual cost to the company, what they paid for it?

A. The entire property was bought through a stock issue and inventoried subsequent to the formation of the company.

The counsel for the company then made explanation and remarked, "These figures we are proving now are not book costs, they are reproduction costs". He then said that any addition to the plant since the organization of the company appeared in the books at actual cost. In this proceeding the Commission is not interested in the amount of stock which the company paid for its property. In the words of the statute, the amount of capital actually expended refers to the amount which the property actually cost. The witness further stated that he had made no allowance for depreciation although some of the pipe lines had been laid for over thirty years.

Before making any further examination of the theory upon which the company bases its figures, it may be well to examine what the authorities have said about reproduction costs.

Chairman Stevens, formerly of this Commission, in the case of *Fuhrmann v. Cataract Power and Conduit Co.*, 3 P. S. C. Rep. Second District, 656, at page 684, in discussing the question of reproduction cost, says: "As a means of ascertaining the amount of the actual investment it is confessedly imperfect. At best it can produce only an approximation. In most cases it varies so widely from the actual cost as to put the two in a position of actual hostility."

"This method of ascertaining the fair amount of the investment, although it has been treated with great favor, is also subject to severe criticism. The first arises from the practical impossibility of ascertaining with any reasonable degree of accuracy the cost of reproduction new. This impossibility has been demonstrated in most attempts which are made. Engineers differ widely in their results, and this when their professional standing and integrity are in every respect equal. Most classes of work involve great difficulties in ascertaining the just unit prices, the amount and efficiency of the labor involved, the skill and push of the superintendents, the power economies which may be practiced, the unforeseen delays and accidents. To provide against all possibilities of any character which may enhance expense, the experience of the engineer is usually dragged to its depths; his researches into the experiences of others are pushed to the uttermost. The result is that every work is charged with every expense, usually upon a percentage basis, which has ever been found to be attached under any conditions to work of the character under inquiry. The result is inevitable. It is sure that all of the alleged expenses are found in any given work and the resultant is swollen beyond all reason and beyond practical experience. . . . An estimate to induce a plunge into an enterprise is not justly comparable with one designed to justify an existing rate of dividend."

In *re Mayhew v. Kings Co. Lighting Co.*, 2 P. S. C. Rep. First District 659, the Commission says, page 680: "The company has produced no vouchers, bills, or records to discredit the estimates of the Commission's engineers, or to support the estimates of its own witnesses, who were repeatedly asked whether they had examined the records of cost of the company to determine whether their estimates had any direct relation to the amount actually spent. They did not produce actual expenditures to support their estimates, and counsel to the company expressed to the Commission the opinion that actual cost of existing property had nothing whatever to do with the amount to be considered as the fair value of the property. In our opinion it has a vital relation and in view of the provision in the Public Service Commissions Law upon this point the Commission must give it full weight and consideration. . . . The Commission regards as serious omission the failure of the company to produce the records, although requested to do so."

In *re Cripple Creek Water Co.*, P. U. R. 1916 C, page 788, the Colorado commission held that as it was able to ascertain the true original cost, that the valuations made by the engineers of the company and the commission should receive small consideration at its hands.

In *Smyth v. Ames*, 169 U. S. 466, at page 547, the original cost of construction is one of the items mentioned which should be taken into consideration in determining the reasonableness of rates. The Legislature of the State of New York has embodied into statute law the principle declared by the Supreme Court of the United States.

In *San Diego Water Co. v. San Diego*, 118 Calif. 556, the Court says: "Nor would it, on the other hand, be just to the consumers to require them to pay an enhanced price for the water, on the ground that it would now cost more to construct similar works. Such a contingency may well happen, but to allow an increase of rates for such reason would be to allow the water company to make a profit, not as a

reward for its expenditures and services but for the fortuitous occurrence of a rise in the price of material or labor. The law does not intend that this business shall be a speculation in which the water company or the consumers shall respectively win or lose upon the casting of a die, or upon the equally unpredictable fluctuations of the markets. For the money which the company had expended for the public benefit it is to receive a reasonable and no more than a reasonable reward. It is to be paid according to what it has done and not according to what others might conceivably do. In effect, a bargain between the company and the public was made when the works were constructed and this matter is to be determined according to the state of things at that time."

In *Antioch v. Pacific Gas and Electric Company* (1914), 5 Calif. R. C. R. 19, 33, cited L. R. A. 1916F Notes, page 615, Thielen, Commissioner, said: "The mind of a practical man instinctively turns for first guidance to the simple question of the amount of money which has been honestly and wisely invested. While it is of course evident that there may be many circumstances under which the application of this basis alone would not be equitable and that qualifications must be made as justice and equity require, it would seem to the lay mind that a rate fixing authority will not go far wrong if in determining the basis for rates it first ascertain the amount of money which the utility has invested honestly and with a fair degree of wisdom in the business which it is conducting for and on behalf of the public."

The Indiana Public Service Commission, in *Commercial Club v. Citizens Gas and Fuel Company*, 1916 E, P. U. R., page 1, holds that the actual cost of the plant while not actually controlling nevertheless would be very valuable evidence in determining present worth.

In *Wilkesbarre v. Spring Brook Water Supply Co.*, 4 Lack. Leg. News (Pa.) 367, it is held that the primary basis of any calculation as to the value of a water plant must be the money actually invested by the owners.

It is unnecessary further to multiply citations. Even in those cases where reconstruction cost is deemed to be a proper basis upon which to determine value in a rate case, great stress is laid upon the original cost as an important means by which to determine present value. Here the United Company absolutely refused access to records which undoubtedly would have given the true cost of property which had been turned over to the Iroquois Company at an alleged valuation of \$5,580,505, more than one-half of the authorized capital of the Iroquois Company, and the refusal was based not upon the reason that the books did not show such cost but upon the reason that the stipulation did not cover the request to examine the books. The United Company was willing to show the actual cost provided the Commission and the city were willing to accept such evidence as the company was willing to offer.

The stipulation plainly covered the point in question. The only condition imposed to make the stipulation operative is that the reasonableness of the price paid for gas by the Iroquois Company to the United Company is in issue. That this price is an issue is admitted by the Iroquois Company when it proceeds to offer much evidence upon that disputed point. When the question noted is in issue, then the books, papers, records, and physical property of the United Company are as much open to the inspection of the Commission as though the company and its affairs were under the jurisdiction of the Commission. If it had been the intention to limit the examination solely to the question of the reasonableness of the price of gas sold to the Iroquois Company by the United Company, then the able and astute counsel who acted for the Iroquois Company in the 1912 proceeding would have seen to it that the stipulation clearly expressed that intention.

If there can be any doubt as to the true meaning of the instrument in question it must be interpreted most favorably for the public.

People v. B. R. R. Co., 126 N. Y. 29, was an action to have declared forfeited for non-user certain franchises granted to the company by an act of the legislature. The Court says, page 37, "Words and phrases which are ambiguous, or admit of different meanings, are to receive, in such cases, that construction which is most favorable to the public. . . . The defendant can not claim a liberal or enlarged construction of the act to shield itself against a forfeiture alleged to have been voluntarily incurred."

Can the Iroquois Company now claim an enlarged or liberal construction of a stipulation voluntarily made?

In *Sprague v. Rochester*, 159 N. Y. 20, at page 26, the Court says, "A statute which creates a new rule, unknown to the common law, for the protection of a city against its own citizens, should be construed strictly against the city and liberally in favor of the citizen."

In *Coosan Mining Co. v. South Carolina*, 144 U. S. 550, at page 562, the Court, in speaking of the legislative grants of property, franchises, and privileges, says, "Statutory grants of that character are to be construed strictly in favor of the public"; and again, "This principle" it has said "is a wise one, as it serves to defeat any purpose concealed by the skillful use of terms to accomplish something not apparent on the face of the act, and thus sanctions only open dealing with legislative bodies".

In this case, the State of New York, by the force of its statutes through the body designated for that purpose, granted certain valuable rights and privileges to the Iroquois Company by an order based upon certain conditions, one of which was the acceptance of the stipulation in question. The parties to whom the stipulation applied voluntarily accepted it. Can any argument which applies to the interpretation of a grant made directly by legislative act, not be applied to the stipulation in question?

We have called attention to the fact that the figures presented to the Commission as the value of the Iroquois Com-

pany are according to the claim of the company based entirely upon reproduction cost. At one point counsel for the company said, "our case has thus far proceeded upon the theory of the reproduction cost and that is the theory we are going to continue upon". The gentleman who made the figures for the company is a consulting engineer who had had no practical experience in the natural gas business upon which to base his conclusions. For a year and a-half he represented the State Tax Commission as appraiser upon special franchises. For nearly a year he represented the Public Service Commission for the First District of New York state. While we do not criticize his ability as an engineer, it is quite apparent that he had no experience which would make his opinion as to the value of the component parts of a natural gas plant of any particular value. He had not made an examination of the plant, but his knowledge was obtained entirely from the books of the company and from information derived from others. His testimony was of the most theoretical character. It would appear from his testimony that he did not in all cases make use of the experience which he had previously had. It appeared that some of the pipe lines had been laid for over thirty years. He testified that in his work for the State Tax Commission he had to do with the question of depreciation of iron pipe that had been laid in the highway, and that he always allowed from one and one-half to two per cent for depreciation, the amount depending upon the size of the pipe. He added, however, with regard to his work in this case, "We have made no allowance for theoretical depreciation in this case". This witness added 10 per cent of the total reproduction cost of the physical plant, as figured by him, for a "going value". The amount added is \$1,482,888.07. The witness stated he had assumed 10 per cent of the total reproduction value and added it as a part of the capital account, and further stated that this is in accordance with the best

practice as laid down by the authorities. The following is a part of the testimony of the expert:

Q. You have taken what you consider would be the reproduction cost of the physical plant?

A. In existence today.

Q. And then added 10 per cent to that for going value?

A. Yes, sir.

Q. How does that give you your going value?

A. Well, the only other way of figuring it would be to go back into the operating records, way back into 1886, and figure all the actual expenses.

Q. The only other way would be to get the actual expense of building up your business?

A. Of building up our business.

Q. Now then, this is really a guess isn't it, this 10 per cent?

A. This is a guess; oh, yes.

and later this testimony was given by the witness:

Q. Did you know that this Iroquois Gas Company was formed by the consolidation or union of several other companies?

A. Yes, sir.

Q. Do you know anything about the history of those companies?

A. I have not tried to investigate those at all. The companies are — I have listed here in the first part of this report.

Q. Then as a matter of fact not having the facts which you should have upon which to arrive at the going value with any reasonable degree of accuracy, you have made the best guess you could under the circumstances?

A. I have made the best guess I could under the circumstances. Ten per cent is the usual allowance.

The Commission is unaware of any rule which allows a guess to take the place of competent evidence which may be difficult to obtain or which may require considerable labor for its production.

It is not at all unlikely that an examination of the books would have shown that the expense of building up the business had already been charged to operating expenses or capital account and that another allowance for going value could not be made.

The witness further obtained many of his cost prices from the manufacturers of the various items; whether or not

these were catalogue prices does not appear. It is not at all probable from the witness's testimony that these prices were those at which the company could have bought the goods. We all know as a matter of common knowledge that list prices are subject to discounts and that a company of ample means can and usually does take advantage of that fact.

Among the items submitted by the witness is the reproduction cost of paving over the city plant pipe lines as of December 31, 1917. The total direct estimated cost amounts to \$502,984.31. This evidence was allowed as a part of the report but it can not be taken into consideration. There is not a particle of evidence to show what if anything had been paid for paving. Many of the pipe lines have been laid for years, and certainly it would be unjust to add this item to the cost of the property. (*Buffalo Gas Co. v. City of Buffalo*, 3 P. S. C. Rep. 2nd Dist., page 553, at page 585, and cases there cited; *People ex rel. Kings Co. Lighting Company v. Willcox*, 210 N. Y. 479, at page 494.)

It is interesting to examine the method adopted by one of the company experts to determine the cost of drawing pipe from the freight station to the place where wanted and then snaking it. In 1913 the cost of a team was \$4.50 per day; in 1917 it was \$7 per day. Instead of taking the cost of teaming per day for each year and then determining the average for five years, and from the resultant figure and the total amount of work done arriving at the total cost, he made the following explanation of the manner in which he made his estimate:

Q. Then how did you arrive at the average cost for this handling?

A. Each year by itself, taking the price of teams at \$4.50 a day, and then \$7 a day.

Q. But you are averaging five years?

A. Yes.

Q. Perhaps we do not understand each other, but it would seem to me that the proper way to find out average was to add up the five years, the different cost of pipe, and divide it by 5.

A. Well, we didn't do it that way.

Q. How did you arrive at the average?

A. We took the labor and the teaming each year by itself.

Q. Then averaged for five years?

A. And then struck an average later on.

Q. Of the total?

A. Of the total.

It is quite difficult to reconcile some of his figures with his testimony, but if we accept his explanation as defining the true method of his work it is quite evident that as his figures were based solely upon estimates, and if these estimates were carefully made, and it should appear that during any one year when prices were the highest an unusually large amount of teaming was done, that the final result or aggregate would be higher than if the calculation was made by the first method suggested in the testimony. Let us illustrate: According to the witness, the price of a team per day in 1913 was \$4.50; in 1914, \$4.50; in 1915, \$5; in 1916, \$6; in 1917, \$7. The average price per day for the five years would be \$5.40. If we assume that in each of the years 1913, 1914, 1915, and 1916, one hundred days of teaming was done, and that in 1917, the year of the highest price, two hundred days of teaming were done, the total cost at the average price of \$5.40 per day would be \$3240. If however we figure the total cost of each year by itself, the total cost is \$3400.

The witness admitted that he knew nothing about the season of the year when the pipe was laid. Neither did he know whether figures of the actual cost were available. He testified —

Q. As I understand, Mr. ———, your report is based entirely upon an estimate?

A. On an estimate, as I saw it.

Q. And not upon any actual figures given you?

A. None, whatever.

Q. A large part of this work had been done a great many years ago, had it not?

A. Yes, sir.

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Q. Do you know whether figures were available as to actual expenses of any of this work or not?

A. I haven't any knowledge of that.

Q. Did you make any inquiry as to that point?

A. No, sir.

It may be said in passing that a consulting engineer called by the city, who had been in the natural gas business since 1882 or 1883, and who testified that he had laid thousands of miles of pipe line, severely criticized the figures given in behalf of the company and stated that many of the items for which estimates were submitted were unnecessary.

Without further pursuing this branch of the case, it may be said that the company in only a few instances submitted any figures as to actual costs and made no explanation as to why such costs were not produced, nor was any claim made that they were not available. The estimates of reconstruction cost were based upon figures taken from years in which very high prices prevailed and were very evidently made in such a way as to be most valuable for the company; and the Commission with due regard to the law and its sworn obligations to the public would not be justified in basing any new rate upon the evidence presented.

The expert for the company placed upon the record an income statement, making a comparison between the results of present rates and proposed new rates, based on operations of a normal year. This statement shows that under the present rates the company would receive a net income of \$27,367.90, but in his testimony he calls attention to the fact that under a recent increase in wages, which was estimated to increase the expense of the company at least \$36,000 per year, this net income would become a deficit. But we have in the record figures of actual business transacted by the company for five and one-half years from July 1, 1912, to January 1, 1918. These figures were made by the company itself, and as they are based upon actual transactions over a reasonable period of time they are more satisfactory and trustworthy than estimates of future operations.

From the annual reports filed with the Commission by the company, it appears that from July 1, 1912, to January 1, 1918, the company purchased from the United Company 42,237,276 thousand cubic feet of gas and paid therefor \$8,560,363.60. If the company had paid at the rate of 26 cents per thousand cubic feet, the proposed new rate, the gas would have cost \$10,981,691.76, an addition of \$2,421,328.16. In other words, the expenses of the company would have been increased by the latter amount. During the same period of time, \$2,008,125 was paid in dividends; and in addition, a corporate surplus was accumulated amounting to \$1,912,539.32; a total net profit of \$3,920,664.32. Taking from this profit the additional expense which would have been incurred by the payment of 26 cents per thousand cubic feet, there would have still remained a total net profit of \$1,499,336.16, or an average yearly profit of \$272,606.58, or a yearly rate of 3.39 per cent upon the issued capital stock. These figures would take care of the yearly increase in wages of \$36,000 and still leave a yearly net profit of \$236,606.58.

A return of 3.39 per cent upon the capital stock, which return would be slightly less if the increased wage item is taken into account, is undoubtedly not a proper or sufficient return if the affairs of the Iroquois Company are to be considered alone, but the return is sufficient to show that the company will not be run at a loss even with the present rates. The company is self supporting and even pays a small profit at the present rates. But the financial affairs of this company are so mingled with those of another company, and it is so completely controlled by that company, that we must consider the relation between the two. The Iroquois Company is completely owned by the National Fuel Gas Company and the United Company. Previously and in support of another point attention has been called to the financial prosperity of the two companies named and their relationship to the Iroquois, but it will not be amiss again to call attention to facts previously noted together with others which will

support our present views. The National Fuel Gas Company is a New York corporation with its offices in New York city, and is not a producing company but a holding company owning the whole or a majority of the stock in six different corporations. This corporation also owns all of the stock of the United Company. The annual report of the Iroquois Company states that it has two stockholders, namely, the National Fuel Gas Company owning 65,930 shares, and the United Company owning 14,395 shares.

The report to the stockholders of the National Fuel Gas Company shows a direct or indirect ownership of 100 per cent of the stock of the Iroquois. The vice-president and secretary of the National Company testified that it owned and controlled 100 per cent of the stock of the Iroquois Company. The same officer also testified that his company owned all of the United Company. In other words, all profits of the Iroquois Company go, the greater part to the National Company and a lesser part to the United Company, but eventually all profits find their way to the treasury of the National Company, together with all or a part of the profits of other companies owned or controlled by it. An examination of the reports of the National Fuel Gas Company shows that company to be in an exceedingly prosperous condition; its net earnings increased from \$2,737,811.98 in 1913 to \$4,446,495.14 in 1917; its surplus increased from \$11,004,950.10 in 1914 to \$13,471,942.98 in 1917. It was the recollection of the vice-president and secretary of the company that since 1908 cash dividends of 10 per cent have been paid. In 1908 there was a stock dividend by which the capital stock was increased from \$2,408,100 to \$14,448,500. Following that increase in the capital stock the 10 per cent cash dividend still continued.

If we examine the affairs of the United Company we find evidence of an extremely prosperous life. The average yearly dividend paid by that company from and including 1886 to and including 1917 was 17.55 per cent. On December 31, 1917, that company possessed a surplus of

\$4,800,759.63. As we have remarked before, the profits not only of the Iroquois Company but of the United Company must eventually find their way into the treasury of the National Fuel Gas Company; that the stockholders of the Iroquois Company are corporations and not individuals makes no difference in the relative rights of the interested parties. If a holding company may divide its business into several distinct and separate utility corporations and then insist that the financial affairs of each company must be considered alone, irrespective of the prosperity enjoyed by the holding company from its entire business, in arriving at a determination as to a proper rate of income for that company, then the Public Service Commissions Law with regard to rate making is a delusion and a snare and falls far short of its intended purpose, and renders any attempt of this Commission to protect the public against what it may consider to be exorbitant rates useless and unavailing.

We do not believe that the law can be so construed. The statute, section 72 of the Public Service Commissions Law, provides that in determining the price to be charged for gas or electricity, the Commission may consider all facts which in its judgment have any bearing upon a proper determination of the question. The Legislature has left to the Commission the widest discretionary powers as to what facts are to be considered. It was the evident intention of the law-making power to give the Commission such authority as would enable it to do exact justice between a company that was to receive the money and the patrons who were to pay the money, so that the one would receive a fair return upon its investment and the other should be required to pay only a fair price for what he received. As was said in *People ex rel. Wood v. Lacombe*, 99 N. Y. 43, at page 49, "In the interpretation of statutes, the great principle which is to control is the intention of the Legislature in passing the same, which intention is to be ascertained from the cause or necessity of making the statute as well as other circum-

stances. . . . It is the spirit and purpose of a statute which are to be regarded in its interpretation."

The principle laid down in the *Lacombe* case is cited with approval in *Spencer v. Myers*, 150 N. Y. 269, at page 275.

The principle laid down in the case of *St. Louis and San Francisco Ry. Co. v. Gill*, 156 U. S. 649, at page 665, is in point. In that case the Court had under consideration the effect of a statute which prescribed a maximum rate of fare of 3 cents per mile. The company had been sued for a penalty provided for a violation of the statute. The company defended upon the ground that the portion of the road over which the plaintiff had been carried was highly expensive to construct and maintain and that the cost of maintenance and transporting passengers over it exceeded the minimum rate fixed by law. The Supreme Court held that the correct test was as to the effect of the law on "the defendant's entire line, and not upon that part which was formerly a part of one of the consolidated roads; that the company can not claim the right to earn a net profit from every mile, section or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative . . . and finally, that to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses."

The learned counsel for the company has argued that there should be an annual charge for amortization upon the theory that the supply of natural gas is failing and that within a few years the plant will become useless as a means of revenue; and that the owners are entitled not alone to a rate which will give a present adequate return but to a rate which will in addition, at the end of the estimated life of the plant, have compensated them for the value of the plant used in the business, and estimates have been presented intended

for use upon that theory. Without attempting either to approve or deny the claim so ably presented by counsel, the figures presented and the theory advanced do not fit the facts of this case, because it is assumed that at the end of a certain period that plant will have only a salvage or scrap value. It is matter of common knowledge to this Commission and to those familiar with the business that when the supply of natural gas becomes so scant as to be no longer available as the sole resource with which to furnish light, heat, and power, that other agencies must be sought to replenish the failing supply. It is not to be presumed that Buffalo and the other cities and villages now supplied by the Iroquois Company will, when a supply of natural gas may be no longer available, remain content without the introduction of some similar product; it is not to be presumed that the company will abandon its works for merely their scrap value. Even now the solution of the matter seems to be the use of some form of artificial gas either to be mixed with the failing supply of natural gas or entirely to take its place.

The president of the Iroquois Company, a gentleman of wide experience in the natural gas business, and whose opinions upon the subject are worthy of careful consideration, testified as follows:

Q. Mr. ———, didn't I understand you to say earlier in your testimony that the mixing of a supply of artificial gas was the only real answer to the shortage coming from the natural article?

A. This is all I can see.

The company has strenuously maintained that its plant is in first-class condition and that the depreciation in its pipe lines is extremely small. It certainly would be unjust and unreasonable to compel the consumer to pay a rate intended fully to compensate the owners of the plant for its value at the time of the failure of the supply of natural gas, less its worth as scrap, and then have the plant, even by the expenditure of a considerable sum of money, made available for many years to come as a means for distributing a

supply of artificial gas. Certainly such action should not be taken unless satisfactory figures are given as to the cost of making the necessary changes and the value of the plant after the changes are made.

The company has introduced in evidence a tabulation based upon estimates as to the effect of the Commission's order restricting gas sales. According to the table submitted the estimated sales of gas for a normal year amount to 12,939,275 thousand cubic feet, and the loss in sales occasioned by the restricting order amount to 1,955,815 thousand cubic feet. There is no basis for this estimate. The only order made by the Commission is in effect from December 15th to March 15th of the following year, and is not intended to limit and does not limit the aggregate amount of sales made by the company. The company is unable to supply the gas needed during extremely cold weather and the order only has the effect of producing a more general distribution. It prevents the waste of gas in furnaces intended for the use of coal, which admittedly do not furnish the full heating value of the fuel to the consumer. It restricts the consumer to the use of a reasonable amount of the product and prohibits the use of gas by the industrial user only when there is not a sufficient supply for the domestic user. If the company could supply all customers with the full amount required for their purposes, then the order would be needless and would be revoked. If the company wishes to be permitted to furnish to some customers all that they may use and thus prevent others from obtaining a necessary supply, then it must abide by the rules laid down by the authorities as to rates when the service is not of a satisfactory character.

Another fact which must be taken into consideration is the quality of the service rendered by the company. There is considerable evidence of the fact that the supply of gas furnished by the company to its customers during the prevalence of cold weather is often inadequate for either heating

or cooking purposes. Charts taken from a pressure gauge were introduced in evidence. These charts show that the pressure of the gas varied to a great degree and at times was extremely low. In fact, it appears and is not substantially disputed that during the winter months the service caused by the variable and the low pressure is extremely bad. There is no evidence from which it can be found that the company is to blame for the low and the variable pressure, but in making rates the quality of the service furnished must be considered; the public should not be required to pay for what it does not get; the burden of furnishing good service is upon the company and not upon the public, and the company must suffer and not its customers in fixing the proper rate when it appears that the company is not performing its service in a satisfactory manner.

It was held *In re Heisen*, P. U. R. 1917 B, page 644, that a utility will not be allowed to charge a rate producing a theoretically adequate return if such a rate materially exceeds the value of the service.

In *Grafton Co. Electric Light & Power Co. v. State*, P. U. R. 1915 C, page 1064, the Supreme Court of the State of New Hampshire holds that upon the question of what rates shall be permitted, the issue is one of a fair return for the service rendered, not of a fair dividend upon the capital of the corporation.

In *Smyth v. Ames*, 169 U. S. 466, the Supreme Court of the United States says, "what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth".

In view of the considerations which have been presented, the Commission is unable to sanction the rates now charged by the Iroquois Company under the last schedules filed by it, but must find that the rates previously charged are fair and reasonable and that the company must return to such rates; and that an order to that effect should be entered.

In the Matter of Schedule Filed with this Commission October 25, 1918, by the ROCHESTER AND SYRACUSE RAILROAD COMPANY, INC., as its Supplement No. 3 to P. S. C., 2 N. Y., No. 8, proposing increased fares and charges for passenger travel, etc. [Case No. 6653.]

Decided April 24, 1919.

Appearances:

Clarence F. Shuster, Esq., counsel for Villages of East Rochester and Fairport.

Lewis, McKay and Bown, attorneys for Village of Fairport.

Charles F. Butler, Esq., attorney for Village of Fairport.

McInerney & Bechtold, attorneys for Town of Brighton and Brighton-Penfield Civic Association.

B. H. Howard, Esq., Supervisor of the Town of Brighton.

D. P. Chindbloom, Esq., traffic manager of the Rochester Chamber of Commerce.

Hiscock, Doheny, Williams & Cowie for Rochester and Syracuse Railroad Company, Inc.

BARRHITE, Commissioner:

This is an application by the Rochester and Syracuse Railroad Company, Inc., for permission to increase its rates for passenger service. The company is the successor in interest of the Rochester, Syracuse and Eastern Railroad Company which became insolvent in 1915, and was thereafter operated by a receiver until 1917, when a sale was had and the present corporation was organized and became the owner of the railroad and has been in possession of and has operated the property since October 1, 1917. The reorganization was carried on under the direction of this Commission. By the Commission, the company was authorized to execute and deliver its mortgage for the sum of \$5,000,000 as security

for the issue of that amount of its first mortgage forty-year gold bonds bearing interest at the rate of 5 per cent. For the purpose of completing the reorganization the company was authorized to issue \$2,500,000 of said bonds at their face value; and in addition, \$2,500,000 par value 6 per cent non-cumulative preferred capital stock and \$1,500,000 par value common capital stock. The capitalization of the company thus became \$6,500,000, at which figure it still remains.

There is no question of over capitalization in the case. The company does not ask for sufficient revenue to enable it to pay dividends. In the words of the counsel for the company, "The company does not expect that its new schedules will produce sufficient net income to enable it to pay dividends, but hopes that it will result in a small surplus over operating expenses, taxes, and fixed charges".

The company's existing schedule of rates is as follows:

- 2½ cents per mile, ticket.
- 2¼ cents per mile, cash, with ¼ cent refund.
- 1¼ cents per mile, thirty-day fifty ride commutation book.
- 1.6 cents per mile, fifteen-day twenty-five ride East Rochester, Stops 11 and 12, to Culver Road.

The proposed new rates are —

- 3 cents per mile, ticket.
- 3 cents per mile, cash, ten cents excess, redeemable.
- 1.5 cents per mile, thirty-day fifty ride commutation book.
- 1.6 cents per mile, fifteen-day twenty-five ride East Rochester, Stops 11 and 12, to Culver Road.
- 2½ cents per mile, mileage book.

The proposed new rates terminate at Rockwood street, near the eastern city line, from which point to Culver Road an additional five cents is to be charged. At Culver Road the lines of the company connect with the lines of the New York State Railways, and on the lines of that company an additional five cents must be paid to reach the center of the city, thus making a ten cent fare within the city limits. Upon the hearing, however, the company abandoned its

claim for a five cent fare between Rockwood street and Culver Road, and conceded that the mileage rate contemplated should land the passenger at Culver Road, no charge to be made between Rockwood street and Culver Road.

The present company began to operate the road October 1, 1917, and the company has presented figures based upon the operations of the road since that date as well as figures based upon operations before that date, and these figures so far as they purport to be based upon actual facts are not disputed by the complainants. It is only when estimates are to be made as to future operating income and expenses that the minds of the parties run in different channels.

The road carried in 1916, 3,397,572 passengers; 3,661,613 in 1917; and 3,401,902 in 1918. The passenger business in 1918 was better than in 1916 and worse than in 1917. It appears by the testimony of one of the officials who had been with the road for eight years that the year 1917 was an abnormal year; that the road during that year carried more passengers than in any other year during his time; but the year 1918 was a bad year for the passenger business arising largely from the fact that during the fall and winter months the epidemic of influenza which swept over the country prevented any except necessary travel. The average amount earned per passenger during 1918, based upon the tariff now in effect, was 23.93 cents. The total revenue from transportation of all kinds was \$953,380.29; all other revenues amounted to \$12,830.74, making a total of \$966,211.03. The operating expenses based upon prices for November, 1918, including taxes, for 2,221,211 car-miles at .3967 cents per mile, was \$881,154.40; interest on \$2,500,000 bonds at 5 per cent, \$125,000; total expense, \$1,006,154.40; or a deficit for the year of \$39,943.37. The above figures are not disputed.

In its estimate for the year 1919 the company charges itself with the same income as for the year 1918 with the

exception of the item \$15,660.06 for express revenue. The express business was taken away from the company when the American Railway Express Company was formed, and given to the steam roads. The loss of the express business leaves the estimated deficit for 1919 at \$55,603.43. If we charge the company with the same number of passengers as were carried in 1917, the year of the largest business in passenger traffic, we increase the company revenue by \$62,148.84 and the deficit becomes a net profit of \$6545.41. But it is not fair to charge the company with the income derived during the year of its largest business under the old rates. Experience has taught that an increase in rates means a decrease in business. In city roads, statistics have shown that an increase of one cent per fare means a decrease of at least 7 per cent in passengers carried; and in interurban railways, where the average fare per passenger is more than the average fare to the urban passenger, the percentage of loss in traffic is liable to be much higher. On the road under consideration, the average amount received from each passenger carried during the year 1918, based upon the present rates which were in force during the last five months of that year, was 23.93 cents, or practically 24 cents. To raise a fare from five cents to six cents is a 20 per cent increase, but the actual addition is only one cent. To raise the fare from two and one-half cents per mile to three cents per mile as proposed by this company is also a 20 per cent increase, but the actual average increase is over four and three-quarters cents.

To charge the company in the estimate for the year 1919 with the average number of passengers carried during the years 1916, 1917, and 1918, we have 3,487,029, or an increase of 85,127 over the number carried in 1918. This would make an added increase in revenue for 1919 of \$20,370.89. But we still would have a deficit for that year of \$35,232.54.

The complainants in making an estimate of the com-

pany's income under the proposed new rates for the year 1919 base their conclusions upon a 20 per cent increase, but the company does not ask for a 20 per cent increase in all of its proposed new rates.

By the tariff which took effect May 5, 1918, a twenty-five trip ticket book at the rate of one and six-tenths cents per mile, valid for passage between Rockwood street and East Rochester, was sold for \$2; and a similar book, good between Rockwood street and Stops 11 and 12, was sold for \$2.40. The above rates were not disturbed by the rates which took effect July 22, 1918, and are still in force. By the proposed new tariff, now under suspension, the sale of these books is retained, and by the concession of the railroad company upon the hearing that the proposed five cent fare between Rockwood street and Culver road shall be eliminated, the books will be sold at the same price as under the previous tariff. Under the tariff now in force mileage books are not sold. Under the proposed tariff these books will be sold at the present rate per mile, namely, two and one-half cents. Statistics presented by the company show that 24 per cent of its passenger income for 1918 came from cash fares and 64 per cent from ticket fares, or a total of 88 per cent for the two classes. It is proposed to make a 20 per cent increase in these two classes of fares. This proposed increase, under our estimate for 1919, would make an increase in revenue of \$152,982.10, or less the estimated deficit \$117,748.56 book surplus for the year's business. This amount would be \$32,251.44 short of the sum required to pay the stipulated dividend upon the preferred stock. But it is extremely improbable that the surplus of the company will amount to the sum stated during the year 1919. The figures given make no allowance for loss of business arising from increased fare. Statistics presented show that in times past a certain percentage of increase in rates for this company never produced a similar percentage of increase in income, but the percentage of increase in income was

much less than the percentage of increase in rates. The figures used do not take into consideration the fact that under the present tariff of two and one-half cents per mile no mileage books are sold, while under the proposed tariff books are to be sold which call for a two and one-half cents per mile rate. It is extremely probable that persons who travel upon the company's road, except those who use it infrequently, will buy mileage books, and this will reduce the income from the estimated figures. In fact, the company can not with any safety to its future attempt to pay any dividend. A 2 per cent item for depreciation upon the value of the company's property in 1917, allowed by the Commission, would exceed the estimated surplus by \$27,000.

Some criticism has been made by the complainants because the estimate of the company as to cost of operation is based upon the actual expense of November, 1918, namely .3967 cents per car-mile, which figure includes taxes. This is a fair and reasonable cost under present conditions, and there is no reason to believe that the same expense of operation will not continue for some time at least in the future. The month used was the last one before the hearing in this proceeding in which the figures of cost of operation were available, and gives the tremendous increase in the cost of operation of trolley roads which has occurred during the immediate past months.

The schedules filed by the company to take effect November 24, 1918, and now under suspension, should be validated except as to such portions as have been withdrawn by the company; and an order to the above effect should be entered.

All concur.

Complaint of twenty-seven customers of THE GAS LIGHT COMPANY OF WAVERLY against said company, under sections 71 and 72 of the Public Service Commissions Law, as to increase in price of manufactured gas and as to service charge. [Case No. 6351.]

Decided April 29, 1919.

Appearances:

Frank L. Howard, Waverly, as attorney for complainants.

Frederick A. Rew, 55 Orange street, Waverly, one of the complainants, in person.

John G. Pembleton, Owego, Tioga county, N. Y., as attorney for respondent.

O. L. Haverly, Waverly, as Treasurer and General Manager of respondent.

FENNELL, Commissioner:

The Gas Light Company of Waverly increased the price of gas from \$1.40 per M cubic feet to \$1.50 per M cubic feet, and added a service charge of 25 cents per month in addition to the price of the gas actually used by the consumer.

The company was incorporated in 1873 and manufactured its own gas up to the year 1912. Beginning that year it has purchased gas from Athens and Sayre Gas Company, a Pennsylvania corporation. The Gas Light Company of Waverly owns all the stock and bonds of the Athens and Sayre Gas Company. The Waverly company has \$150,000 in 5 per cent bonds outstanding and an equal amount of capital stock. Interest charges have been met but no dividends have been paid since 1909.

It was testified at the hearing that the investment of the company amounted to \$89,265.48, made up as follows:

	December 31, 1917
Land	\$800.00
Organization	3,750.00
General equipment	1,739.00
General office equipment	681.00
Works and station structures	3,200.00
Furnaces, boilers, and accessories	1,850.00
Benches and retorts	1,750.00
Holder	4,700.00
Purification apparatus	1,800.00
Accessory equipment at works	388.00
Trunk lines and mains	25,509.00
Gas services	6,971.00
Gas meters	6,878.00
Gas meter installation	1,094.00
Gas tools and implements	1,062.00
Other tangible capital	1,000.00
(Based on an appraisal in 1909 stated to have been made from costs)	\$63,171.00
Materials and supplies	6,598.61
Accounts receivable	6,499.17
Bills receivable	76.00
Cash on hand	12,920.60
Total	\$89,265.48

The company's annual reports on file with the Commission, from 1912 to 1918 inclusive, show investment, together with net income and percentage of return, as follows:

	1912	1913	1914	1915	1916	1917	1918
Fixed capital	\$58,372	\$60,453	\$60,013	\$61,514	\$62,237	\$63,171	\$59,773
Cash	1,769	4,021	2,573	6,031	11,189	12,921	12,310
Materials and supplies	3,231	3,253	4,176	3,625	4,525	6,599	5,215
Accounts receivable	6,294	6,969	6,763	7,019	7,176	6,499	5,841
Bills receivable	900	900	900	.....	71	70	70
Net income from op.	\$70,566	\$75,596	\$74,425	\$78,189	\$85,198	\$89,260	\$83,209
Return on investment	5.47%	6.66%	6.16%	5.02%	4.60%	5.03%	4.09%

The decrease in fixed capital during 1918 is due chiefly to writing off as worthless the book value of furnaces, boilers and accessories \$1850, and benches and retorts \$1750. There are still being carried the following units of property which may or may not be regarded as idle property:

Works and station structures	\$3,200
Holder	4,700
Purification apparatus	1,800
Accessory equipment at works	388
	\$10,088

Assuming, but not holding, that said amount of \$10,088 should be deducted from investment, and without considering salvage value, there would be in service property valued at \$73,121, upon which a return of 8 per cent would produce

\$5849.68. The net income for the year 1918, amounting to \$3401, is 6 per cent on \$56,683 and 8 per cent on \$42,513.

It appears that the company is not making an excessive return on the value of its property as shown by its books. Nor would it be proper to assume that an actual valuation of its property would show the company's figures so excessive as to bring that valuation below \$45,000.

It was claimed that the company's methods might be wasteful. Following is a tabulation of the operating expenses per M cubic feet and the average revenues from sales of gas of all the companies in Class B: those doing a business from \$10,000 to \$25,000. The comparison is not unfavorable to the Waverly company.

Company	Revenue from sales of gas		Operating expenses	
	Total	Average net rev. per M cu.ft.	Total	Average per M cu.ft.
Patchogue Gas Co.*	\$26,984	\$1.43	\$21,495	\$1.1429
Saugerties Gas Lt. Co.†	23,304	1.55	24,130	1.6119
Sea Cliff and Glen Cove*	23,696	1.54	22,768	1.4808
Long Beach Gas*	19,620	1.49	17,651	1.3439
Long Island Gas Corp.*	19,371	1.58	21,100	1.7232
Brockport Gas Light*	15,396	1.35	16,527	1.4500
Gas Light Co. of Waverly	18,064	1.32	12,291	.8972
Huntington Gas†	15,056	1.37	13,853	1.2586
Penn Yan†	12,524	1.62	10,061	1.3037
West Shore*	14,513	1.48	15,880	1.6193
Owego*	12,068	1.47	14,579	1.7792
Suffern Gas*	10,954	1.46	12,089	1.6160

* Net corporate income for 1917 was insufficient to cover fixed charges.

† One of three companies reporting a corporate surplus.

Certain "ready to serve" costs were given by the company. These showed a charge of 46.7 cents per month per meter on 872 meters. Without approving the method used or accepting the amounts stated, still it can hardly be held in this case that 25 cents per meter per month is excessive.

The increase in price not producing an unreasonably high return, the methods of the company not being shown to be wasteful and the service charge not being excessive, the complaint should be dismissed.

An order has been made accordingly.

Chairman Hill and Commissioners Irvine and Kellogg concur; Commissioner Barhite not present.

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of RESIDENTS OF THE HAMLET OF MUMFORD, Monroe county, *against* TRI-COUNTY NATURAL GAS COMPANY as to low pressure of natural gas; and as to readiness to serve charge of fifty cents a month. [Case No. 6619.]

Decided May 1, 1919.

Appearances:

Messrs. Halsey, Mangan & Sanderson for complainants.

Messrs. Kenefick, Cooke, Mitchell & Bass for Tri-County Natural Gas Company.

BARHITE, Commissioner:

The basis of this proceeding is a complaint by certain customers of the Tri-County Natural Gas Company living in Mumford, against the company, upon two grounds, namely —

First, that the gas furnished by said company is low in pressure and supplied intermittently; that it goes out once or twice every day and is a source of waste and damage to consumers; that it entirely fails in the midst of cooking, and those that have to depend upon it for heating are seriously discomforted and their health endangered.

Second, that the ready to serve connection charge of fifty cents per month is an extortion and an outrage and should be abolished at once, because the charge is not absorbed in the bill for gas actually used.

We will first consider the second complaint. The Tri-County company operates in the town of Wheatland under two franchises: one granted to Frank C. Southerland on the 13th day of April, 1908, and afterward assigned to the Tri-County company; and another granted to the Tri-County company itself on the 9th day of July, 1914. Each of these

franchises was granted by the Town Board of Wheatland, in which the unincorporated village of Mumford is situated, and each franchise fixes the rate to be charged for gas. On the 13th day of September, 1918, the same town board, upon the application of the company, permitted a modification of the two franchises mentioned. This modification was allowed, as appears by the resolution of the board, after a public hearing upon the questions involved, one of which was whether a readiness to serve charge of fifty cents per month per customer, in addition to the amount charged for gas used by the consumer, should be permitted. The amendment to each franchise contains a provision that the company may charge and collect, in addition to the amount charged for gas furnished to and used by each consumer, a readiness to serve charge of fifty cents per month, which shall not be merged in the amount charged the consumer for gas used but may be charged and collected monthly whether or not any gas shall have been used by him during the same month, so long as the consumer's service line shall be in open connection with the gas mains. There is no evidence to show that the determination of the board was not fairly made or that it does not represent the best judgment of the members, or that any undue or improper influence was used. The consumers had a chance to be heard. The town board is composed of local officials who presumably are in sympathy with the citizens of the town and will protect the interests of those citizens, and their combined judgment should not be set aside unless it clearly appears that their action was erroneous. That fact does not appear in this case, and the objectionable charge may be retained without passing upon the propriety of a readiness to serve charge as a general proposition. In 1917, out of one hundred and thirty meters in the town of Wheatland, exclusive of the incorporated village of Scottsville, twenty-one pro-

duced an average yearly income of \$3.02; twenty-three an average yearly income of \$7.48; fifty an average yearly income of \$14.93. Of these one hundred and thirty meters, one hundred and fourteen were in the village of Mumford. The surplus earnings of the company for the year 1917 was \$1562.30, with no allowance for return on investment except interest on funded debt, nor for amortization or depreciation of plant and equipment. In 1918 there was a deficit of \$217.19 for nine months of that year, due to a shortage of gas supply amounting to 10,250 thousand cubic feet for the period named as compared with the same period of 1917. In 1917 the company lost \$2047.10 on the business of 61 per cent of its customers, leaving the 39 per cent remaining to make up that loss and the surplus of \$1562.20 for that year. In view of the above facts, the determination of the local officials should not be readily set aside.

The first ground of complaint, which relates to the quality of the service, presents a different question. The Tri-County company has no gas wells of its own but obtains the greater part of its supply from the Pavilion Natural Gas Company and a small quantity from the Caledonia Natural Gas Company. This supply is inadequate properly to serve the customers of the Tri-County company. The growing shortage of natural gas which has been so forcibly brought to the attention of the Commission in several instances affects the service of the company under consideration. The company during the past Winter has carried out the policy laid down by this Commission in endeavoring to care first for the domestic consumers: contracts have been made with industrial consumers to the effect that gas shall not be used by them when needed by the householders. An order has already been made by this Commission which has for its object the betterment of the service by the Tri-County company, but that order is under review in the Supreme Court, and a stay was granted, without notice to the Commission,

which prevents the enforcement of the order of the Commission until final disposition of the case. It is unlikely that during the succeeding months of warm weather any serious trouble with the supply of gas will be found. It should be remembered that the service rendered by the company has a very important bearing upon the rates to be charged. Although the supply of gas may be the best that the company can produce, any embarrassment arising from that failure should be borne by the company and not by the customer.

As the Commission has made one order which had for its object the betterment of service by the Tri-County company, and the execution of that order has been stayed by the Supreme Court, this case should be held open so far as complaint is made concerning the service until the Court has made its decision upon the order already made, when the Commission may take such further action as the facts justify and the decision of the Court will permit.

All concur.

Proposed schedules of rates fixed by IROQUOIS NATURAL GAS COMPANY to take effect January 1, 1918. Order to show cause. [Case No. 6282.]

In the Matter of the Complaint of LOUIS P. FUHRMANN, as Mayor of Buffalo, *against* IROQUOIS NATURAL GAS COMPANY as to proposed increase in price of natural gas. [Case No. 6318.]

Supplemental Opinion, May 13, 1919.

HILL, *Chairman*:

The petition for rehearing herein, filed May 7, 1919, in paragraph numbered 24, calls attention to certain figures in the prevailing Opinion herein that it is claimed should be corrected.

Referring to paragraph 24, subdivision (a):

The report of Arthur Tyng on valuation of physical properties of Iroquois Natural Gas Company is an exhibit in the case. That report contains at page 10 the statement "Net income available for dividends" \$860,892.60 (or contracted to the nearest even dollar \$860,893): this refers to operations for the year 1917. On reading the affidavit of Arthur Tyng, attached to the petition for rehearing, it appears that the item in his report marked "Surplus credits" \$141,126.77 contained the item of \$137,337.21 mentioned in his affidavit. It is claimed that this item of \$137,337.21 represents a book adjustment and not an income for that year, although stated in said report to be "Net income available for dividends".

From the Tyng affidavit it appears that certain properties purchased by the Iroquois company for \$253,969.85 were given a book value of \$442,516.47, based upon the unit prices of 1912 inventory of the company. At the suggestion of the Public Service Commission the difference in these

amounts, namely \$188,546.62, was written off. In the meantime the book cost had been reduced by actual retirements to the extent of \$137,337.21. Inasmuch as \$137,337.21 was written off, based upon a value of \$442,516.47 when the cost price was for the same properties \$253,969.85, there should not have been written off the full amount of \$137,337.21 but such proportion of that amount as the cost price bears to the inventory value. It would appear, therefore, from the Tyng affidavit that instead of \$137,337.21 being treated as surplus the surplus as it now stands should be reduced by that portion of \$137,337.21 which should properly have been written off: this would be about \$78,730. The book entries as adjusted may not actually show that the surplus is too large by the amount mentioned. There is not time now to make an inspection of the books to get definite information as to the actual details, nor is there any necessity to delay action on the petition for rehearing for this purpose. The proper adjustment of this item having no bearing on the decision in this case, it may be left for subsequent attention. It would appear that the item \$137,337.21 should not be regarded as part of the net earnings for the year 1917.

Referring to paragraph 24, subdivision (b):

Assuming a selling price of 30 cents and a purchase price of 21 cents, the item of \$50,000 should be changed to \$90,000.

Referring to paragraph 24, subdivision (c):

There is evidence in the record of a wage increase of \$36,000 in 1918.

Referring to paragraph 24, subdivision (f):

Assuming the Iroquois company pays the United company 26 cents per M cubic feet instead of 21 cents per M cubic feet, there would be an increased cost of \$483,982.30: this additional cost is one of the issues in this case. Under the stipulation the payment of this extra 5 cents to the United requires proof of the necessity of that increase to the United. Failing in that proof we can not regard the payment as war-

ranted as against the public in rates. It may be a proper increase against the Iroquois stockholders. The latter company having agreed to prove costs in a particular way, the stockholders and not the public must stand the loss, if any, because of such failure of proof.

An estimate corrected by the use of these figures would be as follows:

Income available for dividends 1917 (Tyng's report, p. 10)		\$860,892.60
Less—		
Allowance for extraordinary sales in 1917	\$90,000.00	
Surplus adjustment not a part of normal income	137,337.21	
Increase in wages	36,000.00	
		<hr/> 263,337.21
		<hr/> \$597,555.39

Rate of return on approximate

investment cost: $\$597,555.39 \div \$7,336,485.62 = 8.14\%$.

In the Matter of the Passenger Tariff Filed by the SCHENECTADY RAILWAY COMPANY, designated as its P. S. C., 2 N. Y., No. 22, proposing increased fares, rates, charges, etc.

Petition (or Complaint) of SCHENECTADY RAILWAY COMPANY under subdivision 1, section 49, Public Service Commissions Law, and section 181, Railroad Law, for permission to increase certain passenger fares. [Case No. 6583.]

A condition contained in a consent to the construction and operation of an interurban trolley railroad along certain highways in the city of Watervliet, granted by the authorities of that city in 1902, placed certain limits on the rates of fare which the railroad company should be permitted to charge between points inside of said city and points in other municipalities reached by said railroad;

Held, that assuming such limitations to be valid and within the power of the local authorities to impose, the rates therein provided are nevertheless subject to regulation by the Public Service Commission.

Where a trolley system consists of both urban and interurban mileage and is operated as one system, about sixty miles in length, it being found that the same patrons were not to any large degree making use of the different parts of the system indiscriminately, and there was comparatively little continuous riding over different divisions of the system,

Held, that the rates on the different divisions should be treated on their respective merits, and that for rate-making purposes the system should not be treated as a unit.

It is the legislative policy of this State, as disclosed in section 49 of the Public Service Commissions Law, that commutation and other special classes of tickets, lower in rate than regular fares, may be maintained on interurban trolley railroads.

Decided May 20, 1919.

Appearances:

H. T. Newcomb, 35 Nassau street, New York city, for Schenectady Railway Company.

Arthur L. Andrews, Corporation Counsel, Albany, for the City of Albany and the Chamber of Commerce.

James A. Leary, Saratoga Springs, for commuters and patrons of Schenectady Railway Company between Saratoga Springs and Schenectady.

John A. Slade, 10 Citizens Bank Building, Saratoga Springs, for D. J. Harrington, City Attorney of Saratoga Springs.

J. E. Canfield, Saratoga Springs, and *W. J. Burnham*, Saratoga Springs, for the Chamber of Commerce.

S. W. Russell, Deputy Corporation Counsel, Watervliet, for Mayor Edwin W. Joslin of Watervliet.

L. D. C. Woodward, Watervliet, President of Watervliet Chamber of Commerce.

John W. Kenny, 513 23rd street, Watervliet, for the traveling public of Watervliet.

Robert J. Lemmon, 120 12th street, Troy, for the Watervliet Arsenal.

M. R. Kelly, R. F. D. No. 1, Watervliet, and *Frank L. Roberts*, R. F. D. No. 2, Watervliet, for Arsenal employees.

Frederick E. Draper, 16 1st street, Troy, for the Troy Chamber of Commerce.

E. L. McColgin, Savings Bank Building, Troy, Managing Secretary Troy Chamber of Commerce.

Maurice B. Flinn, Parker Building, Schenectady, for the City of Schenectady.

Walter S. McNab, Schenectady, for suburban residents.

Maurice B. Flinn, Parker Building, Schenectady, for the Village of Scotia.

Joseph Gosch, Aqueduct, for the Mutual Benefit Association.

D. Barch, Aqueduct, for the Aqueduct Mutual Improvement Association.

Edward S. Coons, Ballston Spa, for the Village of Ballston Spa.

C. I. Johnson, Ballston Lake, for residents at Ballston Lake.

Joseph Mason, Ballston Spa, for commuters.

Charles H. Collins, Stop 18, West Albany, for Albany-Schenectady Interurban Association.

William H. Sothcott, Stop 6, Albany road, for Stop 6 community and Schenectady branch of Albany Interurban Association.

Peter K. Best, R. F. D., Watervliet, and *W. S. Budlong*, R. F. D., Watervliet, for middle zone, Troy and Schenectady road.

John G. Brown, R. F. D., West Albany, for Colonie Interurban Association.

Alfred S. Bassetts, Stop 3½, Albany road, for residents at Woodlawn.

P. H. Zimmer, 800 Altamont avenue, Schenectady, *H. W. Bancroft*, 1593 Union street, Schenectady, and *Robert MacDonald*, 22 Swan street, Schenectady, for Arsenal employees.

A. Edgar Davies, Schenectady, for Alplaus Improvement Association.

HILL, Chairman:

The Schenectady Railway Company operates a street surface railroad, partly urban and partly interurban. In the city of Schenectady is an urban system consisting of 21.91 miles of road and 38.24 miles of track. This may be called the heart of the larger system, from which radiate three interurban lines: one southeasterly to the city of Albany which it enters over the lines of the United Traction Company; one easterly to the cities of Watervliet and Troy and the village of Green Island, which are entered over the tracks of the United Traction Company; and the third northerly to Ballston Spa, whence its cars proceed still farther to the north over the tracks of the Hudson Valley Company, reaching the city of Saratoga Springs. There is also certain track radiating from Schenectady called the Suburban

division. Altogether there are 60.04 miles of road, comprising 114.61 miles of track, divided as follows: Schenectady City division (within the city limits of Schenectady): 21.91 miles of road, 38.24 miles of track; Suburban division: 9.17 miles of road, 17.30 miles of track; Albany Interurban division: 8.04 miles of road, 16.29 miles of track; Troy Interurban division: 9.57 miles of road, 19.28 miles of track; Saratoga division: 11.33 miles of road, 23.01 miles of track.

At present, the rates of fare charged on this railroad are as follows:

Schenectady City Zone:

Five cents. Also 2½-cent school tickets, sold only for the use of school children under 17 years of age and good only between the hours of 8 a. m. and 9:30 a. m., 11:30 a. m. and 1:30 p. m., and 3 p. m. and 5 p. m.; not good on Saturdays, Sundays, holidays, or during vacation. These school tickets are a franchise stipulation. The first franchise containing this provision was dated September 29, 1911. The tickets are good for city fares only and are sold only in strips of 10 for 25 cents.

There is no other reduced fare or reduced price ticket sold for use within the present Schenectady 5-cent zone.

Albany Interurban Division:

Between Stops 6 and 32½, the fare limits of this division, a distance of 7.8 miles, there are three zones: one extending from Stop 6 to Stop 14, a distance of 2.44 miles; one from stop 14 to stop 23, a distance of 3.36 miles; and the other from Stop 23 to Stop 32½, a distance of 2 miles. The fare in each zone is 5 cents, making a total one-way fare of 15 cents. This is at an average rate of 1.95 cents per mile. The rate per mile in the first zone from Schenectady is 2.05 cents, in the second zone 1.49 cents, and in the third 2.5 cents per mile.

On this division there is sold a commutation book between Albany and Schenectady good for a round trip on each

working day of the month. This book is good for each day of the week except Sunday. It is sold for \$10.40 per month with refund for unused portion made under the following conditions: "Each ticket used will be charged for at the regular round trip tariff, and if amount is not in excess of monthly rate the difference will be refunded."

By the use of the commutation book, and if it is used to its full extent, the round-trip cost between Albany and Schenectady, or vice versa, would be 40 cents, or at the rate of 1.34 cents per mile. This commutation book is good only between Albany and Schenectady. Books are sold at the Schenectady waiting room and refunds made at the Schenectady office.

The commutation ticket carries a passenger between the Plaza in the city of Albany and the terminus in the city of Schenectady. Between these points a passenger is carried over the tracks of the United Traction Company in the city of Albany between the Plaza and Stop 33, for which this company pays the United Traction Company 6 cents for each passenger carried. Therefore, so far as its revenue is concerned, the commutation ticket nets this company 28 cents per round trip, or at the rate of 1.23 cents per mile.

In addition, there is in effect a round-trip rate of 25 cents to or from Albany or Schenectady from a point in the middle zone on this division. In connection with this, the company's tariff contains the following:

On and after March 1st, 1915, a round trip excursion ticket, good until used, will be sold at Schenectady Railway terminals in Schenectady and Albany, N. Y., and at a convenient place in the vicinity of Stop 19 provided one can be obtained, at 25 cents each, good for round trip transportation between Stop 19 or any stop between Stop 19 and Stop 14½ inclusive, and Schenectady, N. Y.; or for round trip transportation between Stop 19 or any stop between Stop 19 and Stop 22½ inclusive, and Albany, N. Y.

These tickets are now on sale at Stop 20 which was the nearest available point to Stop 19 where they could be placed

on sale. This excursion ticket was the result of an order of this Commission.

Troy Interurban Division:

This division extends from Stop 10 to Watervliet city line, a distance of 9.59 miles. It includes three zones: one extending from Stop 10 to Stop 23, a distance of 3.39 miles; one from Stop 23 to Stop 36, a distance of 3.85 miles; and the other from Stop 37 to Watervliet city line, a distance of 2.35 miles. A 5-cent fare is charged on each zone, making a total one-way fare on this division of 15 cents. This is at an average rate of 1.56 cents per mile. The rate of fare per mile in the first zone out of Schenectady is 1.47 cents, in the second 1.30 cents, and in the third 2.13 cents per mile.

A commutation book is sold on this division good between the terminus in Schenectady and in Troy, under the same conditions, price, and restrictions as that sold on the Albany division. By the use of this ticket to its limitations, the round-trip rate between Troy and Schenectady or vice versa is 40 cents, which is at an average rate per mile of 1.24 cents.

This commutation ticket carries a passenger between the Union Station in the city of Troy and the terminus in the city of Schenectady. Between these two points a passenger is carried over the tracks of the United Traction Company into the cities of Troy and Watervliet between the Union Station and the westerly Watervliet city line, for which this company pays the United Traction Company 6 cents for each passenger carried. Therefore, as far as its revenue is concerned, the commutation ticket nets this company 28 cents per round trip, or at the rate of 1.05 cents per mile.

In addition, there is an excursion ticket sold from the middle zone under the same conditions and at the same price as that sold on the Albany division. The company's tariff in this connection contains the following:

On and after May 1st, 1912, round trip excursion tickets, good until used, will be sold at Schenectady Railway terminals in Schenectady and Troy, N. Y., and at a convenient place in the vicinity of Stop 30 provided one can be obtained, at 25 cents each, good for round trip transportation between Stop 30 or any stop between Stop 30 and Stop 24 inclusive, and Schenectady, N. Y., or for round trip transportation between Stop 30 or any Stop between Stop 30 and Stop 35 inclusive, and Troy, N. Y.

These tickets are at present on sale in the vicinity of Stop 30. This excursion ticket is also the result of an order of this Commission.

Also, there is in use a 35-cent round-trip ticket between Watervliet and Schenectady, a distance of 15.02 miles: this ticket is good until used. With its use the average rate per mile is 1.17 cents. It is on sale at the ticket office in the city of Schenectady and also in the city of Watervliet.

Saratoga Interurban Division:

This division extends between Alplaus and Ballston Junction, a distance of 12.23 miles. It includes four fare zones: one extends from Alplaus to High Mills road, a distance of 2.71 miles; one from High Mills road to Timesons, a distance of 2.62 miles; one from Timesons to Brookline, a distance of 3.66 miles; and one from Brookline to Ballston Junction, a distance of 3.24 miles. A 5-cent rate of fare is charged in each zone, making a single one-way fare between Alplaus and Ballston Junction of 20 cents, or at a rate of 1.64 cents per mile. An additional fare of 12 cents is charged from Ballston Spa to Saratoga Springs, making the one-way fare Schenectady to Saratoga Springs 37 cents, or at the rate of 1.70 cents per mile. The rate per mile in the first zone from Alplaus is 1.85 cents; in the second 1.91 cents; in the third 1.37 cents; and in the fourth 1.54 cents per mile.

The tracks in Ballston Spa north of Bath and Front streets are owned and maintained by the Hudson Valley Railroad Company. A passenger riding in the Ballston fare zone pays 5 cents; if in the cars of this company, under

an agreement, 3 cents of this fare goes to the Hudson Valley company and 2 cents to this company. Where the passenger rides on the cars of this company within the Ballston 5-cent zone south of Bath and Front streets, the whole 5-cent fare goes to this company. The 12-cent fare between Ballston Spa and Saratoga Springs goes to the Hudson Valley company.

On this division there is a commutation book sold, good between Schenectady and Ballston Spa. This book is sold for the same price and under the same conditions and limitations as the one on the other interurban divisions, making a round-trip fare between Schenectady and Ballston Spa of 40 cents, or if the book is used to its limitations an average rate of 1.23 cents per mile. These commutation books are on sale in the city of Schenectady only.

There are additional commutation books sold on this division: one, good between Schenectady and Ballston Lake station, for \$5.40 per month, with the same limitations and restrictions as the other commutation books above described. If this book is used to its full limitations, the round-trip rate between Ballston Lake station and Schenectady would be 20.8 cents, or at an average rate of 1.28 cents per mile. These books are on sale at Schenectady and Ballston Lake.

A monthly school commutation book to be used by school children is also sold on this division: this is good for transportation on each school day of the month between the city of Schenectady and Ballston Lake station, for \$4.60 per month. This is at a rate of 20 cents per round trip for 23 school days in the month, or at a mileage rate of 1.23 cents. These books are on sale at Schenectady and Ballston Lake.

In addition, there is a round-trip ticket sold between Schenectady and Ballston Lake, good until used, for 25 cents. This rate was established under order of this Commission. With this ticket the rate per mile is 1.34 cents. While it is for use between these two points, it is used to any point within the Ballston Lake fare zone. These tickets

are on sale in the city of Schenectady and at Ballston Lake station.

There is another round-trip ticket sold for use between Ballston Lake and Ballston Spa, limited to the period between May 1st and September 30th, for 25 cents. This ticket is at the rate of 1.54 cents per mile, and is on sale at Ballston Lake station and at Ballston Spa.

The results of operation since the year 1907 are as follows:

STATEMENT SHOWING RESULTS OF OPERATION YEARS ENDED DECEMBER 31, 1907 TO 1918, INCLUSIVE

	1907	1908	1909	1910	1911	1912	1913
	Dollars	Dollars	Dollars	Dollars	Dollars	Dollars	Dollars
Operating revenues.....	1,065,320.58	880,440.37	1,015,400.02	1,141,359.91	1,188,003.34	1,255,958.96	1,393,502.69
Operating expenses.....	768,614.12	623,899.73	627,838.06	680,100.79	701,416.87	734,051.05	830,276.58
Net operating revenues.....	296,706.46	256,540.64	387,561.96	461,259.12	486,586.47	521,907.91	563,226.11
Taxes.....	32,033.85	30,815.39	48,788.35	45,952.10	57,063.73	61,577.50	66,904.66
Railroad operating income.....	264,672.61	225,725.25	338,773.61	415,307.02	429,522.74	460,330.41	496,321.45
Other operations income.....	.....	.....	.....	.....	.....	.....	.....
Non-operating income.....	8,264.04	6,581.31	13,174.29	11,430.61	12,076.13	4,241.67	2,678.81
Gross income.....	272,936.65	232,306.56	351,947.90	426,737.63	441,598.87	464,572.08	499,000.26
Deductions from gross income:							
Interest on funded debt.....	90,000.00	90,000.00	90,000.00	90,000.00	90,000.00	90,000.00	90,000.00
Interest on unfunded debt.....	1,147.03	1,440.38	3,042.77	4,417.70	2,386.84	4,965.53	11,770.48
Other deductions.....	.....	.....	4,249.96	1,284.96	1,274.96	1,274.96	1,216.65
Total deductions from gross income..	91,147.03	91,440.38	97,292.73	95,702.66	93,661.80	96,270.40	102,987.13
Net corporate income.....	181,789.62	140,866.18	254,655.17	331,034.97	347,937.07	368,301.59	396,013.13

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	1914	1915	1916	1917	1918	Per cent increase or decrease, 1918, compared with 1907	Per cent increase or decrease, 1918, compared with 1917
	Dollars	Dollars	Dollars	Dollars	Dollars		
Operating revenues.....	1,304,303.76	1,178,215.72	1,329,583.14	1,447,151.28	1,427,778.29	34.02	*1.31
Operating expenses.....	833,371.85	762,211.96	867,183.11	866,233.69	1,245,047.15	61.99	26.21
Taxes.....	470,931.91	416,003.76	462,430.03	460,917.59	182,731.14	*38.41	*60.35
Net operating revenues.....	84,803.56	91,313.11	88,811.18	88,196.72	86,694.73	170.64	*1.70
Railroad operating income.....	386,128.35	324,690.65	373,618.85	372,720.87	96,036.41	*63.71	*74.23
Other operations, income.....	5,663.18	.....*	2,678.80	.....1,142.53	*1,078.98	.....*	*194.44
Non-operating income.....	391,811.53	324,638.77	376,297.65	373,863.40	94,957.43	*65.21	*74.80
Gross income.....	.....	.....	.....	.....	.....	.....	.....
Deductions from gross income:	.....	.....	.....	.....	.....	.....	.....
Interest on funded debt.....	90,000.00	90,000.00	111,425.00	133,800.00	133,800.00	48.67	.....
Interest on unfunded debt.....	16,651.08	17,788.80	16,815.59	3,758.17	6,555.95	471.54	.....
Other deductions.....	1,175.00	1,175.00	8,787.17	11,145.15	12,368.67	.....	.....
Total deductions from gross income.....	107,825.08	108,963.80	137,227.76	148,703.32	152,724.62	67.56	2.70
Net corporate income.....	283,985.45	215,674.97	239,069.89	225,160.08	*57,767.19	*131.78	*125.65

* Shows decrease.

The operating revenue per mile of track in 1907 was \$9550, and in 1918 \$12,460, an increase in the period of 30.47 per cent, while during the same period the operating revenue per car-mile increased from 26.09 cents to 40.92 cents, a gain of 56.84 per cent.

The operating expenses in 1907 were \$768,614, and in 1918 \$1,245,047, an increase of about 62 per cent. The operating expenses in 1917 were \$986,233, showing a sharp increase in 1918 over 1917.

The operating expenses per mile of track in 1907 were \$6770, and in 1918 \$10,860, an increase of 60.4 per cent, while per car-mile the expense increased in the same period from 18.83 cents to 35.68 cents, an advance of approximately 90 per cent.

The company, according to the terms of the petition and a proposed new schedule, propose to increase its fares to the following, namely —

1. Within the city limits of Schenectady 6 cents, except for school children, and where limited by certain franchise provisions to 5 cents.

2. Within the urban district of Schenectady but outside the city limits 6 cents, except for school children.

3. Between any point within the city limits of Schenectady and any point in the urban district but not within the city limits 8 cents, except for school children.

4. To abolish the present zone system on all of the inter-urban lines and substitute therefor a new zone system, consisting of zones of substantially one mile each, and charge 3 cents in each zone, with a minimum fare of 6 cents.

5. To abolish all commutation and special fares which have been mentioned above.

These larger rates it was estimated would increase the gross revenues in the sum of \$416,592 per annum. These proposals have been modified in some respects by the acceptance of the resolution of the Schenectady city authorities, hereinbelow referred to.

VALUATION AND RETURN

The books of the company show a valuation of \$7,343,447.93. The principal proof given on this subject was the appraisal made in August, 1918, by Marwick, Mitchell, Peat & Company, chartered accountants. This report was made for the Mayor of Schenectady, and was therefore presumed to be as unfavorable to the company as any evidence likely to be producible. It shows fixed capital of \$5,885,019. For the purpose of this case the company seems willing to assume a valuation of about that amount, as that figure is apparently considered by it to be much higher than it needs to entitle it to the rates asked for: this is something over \$50,000 per mile of track. The company has no steam plant, purchasing its power from other sources. In a proceeding which the Commission conducted in 1914, relating to the Schenectady urban and suburban lines alone, which was instituted by complaint of the city and prosecuted by it, there was a conceded value to those lines of \$3,157,809.14. The Marwick report allocates \$3,441,029 within the Schenectady 5-cent zone and \$2,443,990 outside of that zone. The company's allocation is \$5,013,557 to the Schenectady 5-cent zone and to the interurban properties \$2,339,527, the latter figure being slightly less than the Marwick figure. If for the present purpose we take the figure conceded by Marwick in 1918 of \$5,885,019, and allocate \$3,441,029 to the urban system and \$2,443,990 outside of that zone, we will as to the former be close to the value conceded by the city in 1914, and as to the latter we will have approximately the figures given by Mr. Hamilton in 1917. For the purposes of this case these figures are probably sufficiently correct to avoid injustice, and in the absence of an appraisal by the company we will accept them. The urban zone referred to includes the track outside the city limits in Scotia, Aqueduct, and Rexford, hereinabove referred to as the Suburban division.

In respondent's exhibit No. 42, \$300,000 of the fixed

capital of the urban lines is arbitrarily transferred to the interurban lines in equal amounts, in order to charge those lines with the estimated proportion of city track and facilities which they use. This is perhaps as fair a way as any of arriving at the relative earnings of the respective lines. Adopting this method, we can now arrive at an assumed valuation for the respective lines, taking as a basis of allocation as between the interurban lines the proportions given by the company in said exhibit, the result being as follows:

Urban lines as above.....	\$3, 441, 029	
Less \$300,000 transferred as stated.....	300, 000	
		\$3, 141, 029
Interurban lines	\$2, 443, 990	
Plus the \$300,000 transferred	300, 000	
		2, 743, 990
		<u>\$5, 885, 019</u>

Allocating still further on the basis of the figures given in exhibit No. 42, reduced proportionately and dropping fractional figures, we find —

Urban lines	\$3, 141, 000
Albany division	833, 000
Troy division	800, 000
Saratoga division	1, 111, 000
	<u>\$5, 885, 000</u>

If an 8 per cent return is computed on these valuations, we find the return required by the various lines would be —

TABLE A		
Urban lines	\$3, 141, 000	@ 8% = \$251, 280
Albany division	833, 000	@ 8% = 66, 640
Troy division	800, 000	@ 8% = 64, 000
Saratoga division	1, 111, 000	@ 8% = 88, 880
Total		<u>\$470, 800</u>

Turning now to the earnings previously shown, we find that prior to 1912 the gross income never reached the level shown in Table A; that in 1912 it approximated it (\$464,572); in 1913 it somewhat exceeded it (\$499,000); in 1914 it was \$391,811; 1915, \$324,638; 1916, \$376,297; 1917, \$373,863; and in 1918 it dropped to \$94,957. During all of this period there was on the whole a gradual increase in gross revenues ranging from \$1,065,320 in 1907 to \$1,427,778 in 1918. The great decrease in gross income was due therefore not to failing business, because that was

growing, but to increase in operating expenses. The greater part of this increase is attributable to wage increases ordered by the National War Labor Board, only part of which appear in the 1918 account.

A statement showing allocation of income by divisions, for the year 1918, from the company's books, shows the following:

STATEMENT SHOWING MILES OF TRACK OPERATED, FIXED CAPITAL, CAPITAL STOCK, AND FUNDED DEBT ISSUED, TOGETHER WITH ALLOCATION OF INCOME BY DIVISIONS, YEAR ENDED DECEMBER 31, 1918. Figures in *italics* denote *deficits*.

	Total	Albany division, from Stop 6 to Albany city line	Troy division, from Stop 10 to Watervliet city line	Saratoga division, from Albany Jet to West and Bath streets, Ballston Spa	Within present city limits family
Number miles of track.....	114.58	16.28	19.28	23.01	56.01
Fixed capital.....	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>
Fixed capital per mile of track.....	7,353,064.27	679,951.60	715,959.12	948,617.45	5,018,557.10
Stock (common).....	64,174.24	41,766.07	37,184.76	41,009.01	89,511.52
Stock (common) per mile of track.....	4,100,000.00	379,250.00	399,340.00	526,030.00	2,795,880.00
Funded debt.....	35,782.86	23,295.45	20,712.66	22,866.93	49,808.60
Funded debt per mile of track.....	2,876,000.00	247,530.00	260,642.40	348,830.80	1,894,496.80
Operating revenues.....	23,354.86	15,204.55	13,516.80	14,920.94	32,574.48
Operating expenses.....	1,427,778.39	324,656.95	111,252.53	130,895.25	920,973.56
Net operating revenues.....	1,245,047.15	127,023.98	96,356.33	96,896.83	924,780.66
Taxes.....	182,731.14	107,633.02	14,896.20	34,008.42	26,193.40
Railroad operating income.....	86,604.73	9,240.66	6,942.08	11,874.58	58,657.41
Other operating income.....	96,086.41	96,392.36	7,954.12	22,133.84	52,445.91
Non-operating income.....	<i>1,078.98</i>	<i>110.70</i>	<i>81.46</i>	<i>84.99</i>	<i>601.90</i>
Gross income.....	94,957.43	96,381.66	7,872.66	22,048.98	33,245.81
Deductions from gross income:					
Interest on funded debt.....	133,800.00	12,376.50	13,032.12	17,166.54	91,924.84
Interest on unfunded debt.....	6,555.95	606.42	638.55	841.18	4,460.85
Other deductions.....	12,368.87	1,144.10	1,204.71	1,586.89	5,432.97
Total deductions from gross income.....	162,724.82	14,127.02	14,875.38	19,594.56	104,127.66
Net corporate income.....	<i>57,787.19</i>	<i>84,154.64</i>	<i>7,002.79</i>	<i>2,454.36</i>	<i>137,375.47</i>

Notes: In making allocation of fixed capital, a portion of the cost of interurban cars was included in the city investment.

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This statement is interesting as showing a gross income from the Albany division of \$98,392, from the Troy division \$7872, from the Saratoga division \$22,133, and a deficit on the Schenectady local lines of \$33,245.

Combining these figures with the estimated required return on an 8 per cent basis as previously shown, we can arrive at the relative needs of the different portions of the system based on the experience of 1918, as follows:

TABLE B

	<i>Urban lines</i>	<i>Albany div.</i>	<i>Troy div.</i>	<i>Saratoga div.</i>
Gross income required.....	\$251,280	\$66,640	\$64,000	\$88,880
Gross income received, 1918....	<i>\$33,245</i>	98,392	7,872	22,133
	\$284,525	†\$31,752	\$56,128	\$66,747
Total required, \$470,800; total received, \$95,152; net required, \$375,648.				

* Deficit; † Credit.

But the operations of 1919 promise to be much less favorable. The Commission has made an examination of the books and reports of the company, and based on the experience of December, 1918, and January, 1919, we get the following:

STATEMENT OF ESTIMATE OF RESULTS OF OPERATION FOR THE COM-
ING YEAR WITH A PORTION OF INTERURBAN CARS INCLUDED IN CITY
INVESTMENT. Figures in *italics* denote *deficits*

	Total of system	Albany division	Troy division	Saratoga division	City division
	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>
Operating revenues.....	1,497,657	246,215	116,667	137,335	997,440
Operating expenses.....	1,415,287	161,841	127,850	114,439	1,011,157
Net operating revenues.....	82,370	84,374	<i>11,183</i>	22,896	<i>13,717</i>
Taxes.....	90,000	9,630	7,200	12,330	60,840
Railroad operating income.....	<i>7,630</i>	74,744	<i>18,383</i>	10,566	<i>74,567</i>
Other operating income.....					
Non-operating income.....	<i>1,800</i>	<i>123</i>	<i>91</i>	<i>94</i>	<i>828</i>
Gross income.....	<i>8,830</i>	74,621	<i>18,474</i>	10,472	<i>75,449</i>
Deductions from gross income:					
Interest on funded debt.....	133,800	12,876	13,032	17,167	91,225
Interest on unfunded debt.....	6,500	601	633	834	4,432
Other deductions.....	12,458	1,152	1,213	1,598	8,495
Total deductions from gross in- come.....	152,758	14,129	14,878	19,599	104,152
Net corporate income.....	<i>161,588</i>	60,492	<i>33,352</i>	<i>9,127</i>	<i>179,601</i>

For the purposes of this case, however, we will proceed on the figures of 1918, as any increases which we allow will be less than the needs there shown.

SCHENECTADY URBAN LINES

Table B shows a gross income required for these lines of \$251,280, whereas a deficit of \$33,245 was realized. Adding the two we get a requirement of \$284,525. The gross revenues for 1918 were \$950,973.56, including the so called suburban service and crediting the urban fares on the interurban cars to the city system. Assuming that a 6-cent fare will produce a 20 per cent increase in revenue, the increased revenue from such a rate would be \$190,194.71. The full theoretical increase would probably not be realized, as some allowance must be made for decreased patronage by reason of the advanced rate, but we will let the figure stand. There seems to be no reason why this increase should not be granted.

Certain of the earlier municipal consents to construction of urban lines imposed a limitation of 5 cents on city fares, but they applied only to a relatively small part of the present trackage. All of the subsequent grants contained only the limitation that the provisions of the Railroad Law respecting rates of fare should be complied with. Inasmuch as the provisions in question applied to all of the city trackage, it would seem questionable whether the original conditions which affected only a comparatively small portion of the trackage which could not be used as a unit survived the later grants. (*Public Ser. Com. v. Westchester St. R. R. Co.*, 206 N. Y. 209.)

However that may be, the city authorities have now in effect waived the limitation referred to for the time being to the extent of allowing consideration by the Commission of an increase from 5 cents to 6 cents. The terms of this waiver are acceptable to the company and modify its scheme of rates, the basis of the waiver being that the company shall be limited to a 6-cent fare in all parts of the former

5-cent zone which extended at various points beyond the city lines.

ALBANY INTERURBAN DIVISION

Table B shows that the Albany Interurban division earned a gross income of \$98,392 against the theoretical requirement of only \$66,640, and even if we compare this last figure with the prospective gross income for 1919 amounting to \$74,621, we find it about \$8000 in excess of the theoretical requirement. This presents the question whether the system should be treated as a whole without regard to the varying profitableness or unprofitableness of the various divisions, or whether each division should be treated on its individual merits. We are reminded that in the case of urban lines the entire system is treated as a unit without regard to the varying lengths of ride and density of traffic. This is unquestionably true, and as concerns urban fares the unit system has been embodied in our statutes which provide that "No corporation . . . shall charge any passenger more than five cents for one continuous ride from any point on its road or on any road, line or branch operated by it or under its control, to any other point thereof or any connecting branch thereof, within the limits of any incorporated village or city". [R. R. Law, sec. 181.] Under this provision the urban passenger traveling one mile or less pays the same fare as a passenger traveling ten times the distance. It might be called the American as distinguished from the European method, where the value received for each ride is measured out with much precision. For urban traffic this apparently loose method of charging for transportation has some decided advantages. It makes a unit fare which is convenient alike for the company and the patron; and a very important consideration, it encourages the development and occupation of outlying and suburban districts for residence purposes and discourages crowding the inner sections. It must be remembered also that when the trolley system came into vogue its growth and development

were largely based on this idea, and the outlying lands of our cities have been developed and occupied largely in reliance upon a continuance of the unit fare. Already, however, in many cities zone systems are being advocated and in some cases adopted. Whatever may be the best method as to urban traffic, I think the arguments in favor of treating an interurban system as a unit and imposing the same rate of fare on different divisions regardless of their relative profitability must be considered in each case according to its particular facts. In a case where the same people are found to be using the various divisions indiscriminately, or where the riding over different divisions is found for the most part to be continuous, a uniform rate would not be unjust, where otherwise it might be. It may be claimed that rates of fare should not and practically can not be dissected and considered on their individual merits, and we are aware that the United States Railroad Administration has practically adopted this view by promulgating a uniform rate of fare on all railroads within its jurisdiction. But when we turn to the statute for guidance we find that each rate, fare, and charge must be separately and distinctly specified in the tariff schedules, so that in case of complaint each may and does become practically an issue in itself. We find also that the determination of such an issue rests upon the justness and reasonableness of the given rate "with due regard among other things to a reasonable average return," etc. Uniform rates arbitrarily fixed would thus seem to be the antithesis of that which the New York statutes demand.

For the purpose of determining the character of the traffic over the Schenectady system, a check was made under the direction of the Commission in December, 1918, which indicates that of the westbound passengers on the cars of the Albany division about 8 per cent continued through Schenectady to points on the Saratoga division, while of passengers moving in the opposite direction about 16 per cent continued through. This is substantially all of the interdivision

traffic, there being practically none between either the Albany or Saratoga divisions and the Troy division. Every fact in the case would seem to demand that the rates on the Albany division be considered on their merits as applied to that division. Inasmuch as the patrons of this division are now paying even more than their full share, we can find no justification for increasing these rates.

TROY DIVISION

This division extends from Schenectady city line to Watervliet city line. The Schenectady urban fare carries the passenger to a point some distance outside the city line known as Stop 10. From this point to Watervliet city line is a distance of 9.59 miles, divided into three zones: one extending from Stop 10 to Stop 23, a distance of 3.39 miles; the next extending to Stop 36, 3.85 miles; and the third extending to Watervliet city line, 2.35 miles. A 5-cent fare is charged in each zone. From Watervliet city line the cars proceed through Watervliet and Troy over the lines of the United Traction Company, with a 6-cent fare. The present through fare is therefore 5 cents in Schenectady to Stop 10, then three 5-cent zones, then one 6-cent zone: total 26 cents.

The fares charged on this division conform to certain conditions imposed by the City of Watervliet in a consent or franchise granted by its common council April 30, 1902, which in effect fixed maximum fares over the entire Troy division, and the city now claims that this condition is binding on the Commission and prevents it from regulating or increasing the rates thus fixed.

It is noticeable that this provision imposes no maximum on the fare to be charged within the municipality itself, but does seek to fix a maximum for fares between points within the municipality and points outside. Its practical effect, if the condition is lawful, is to regulate the fares over the entire Troy division, and it is claimed that within

the doctrine of the *Quinby* case (223 N. Y. 244) the Public Service Commission is without authority to increase the rate. Whatever may be the power of a municipality to fix a maximum fare within its own boundaries, as a condition of giving its consent to construction, and whatever the law may be as to the power of the Public Service Commission to regulate and reduce or increase such a rate, it would seem to be extremely doubtful that one municipality has any power to regulate rates outside of its own boundaries. A consideration of the practical results likely to flow from the application of such a power would seem to condemn it outright on grounds of public policy. The effect would be that any municipality, however small, located on the line of an interurban trolley road, however large, could impose rates applicable to the entire system.

The regulation of rates is recognized in the *Quinby* case to be a governmental and thus a legislative function.

The fares which were the subject of the *Quinby* case were purely local, and the contract or consent was given in 1890, and had been expressly recognized by the Legislature by section 173 of the Railroad Law in 1910.

But the provision of section 18 of the Constitution referred to in the *Quinby* case, and also in the later *Glens Falls* case (225 N. Y. 216), would seem to have no application to the consent here under consideration which was granted in 1902, by reason of the effect of section 23 of Article III of the Constitution, which provided that sections 17 and 18 should not apply to any bill which "shall be reported to the legislature by commissioners who have been appointed pursuant to law to revise the statutes". It is well known that the Railroad Law of 1890 and the amendments of 1892 were enacted upon the report of the commissioners to revise the statutes, appointed pursuant to chapter 289 of the laws of 1889, and it was pursuant to those laws that the consent of the Village of Watervliet was given. The laws of 1890 and 1892 having been enacted upon reports of commissioners as

stated, were not required by the Constitution to contain a requirement for the consent of local authorities, from which it follows that the provision in the statutes of 1890 and 1892 for such consent, being there not by virtue of constitutional requirement but as an exercise of the uncontrolled will of the Legislature, the concept of constitutional restraint which formed the ground of the *Quinby* decision is not here applicable. The *Glens Falls* case is a clear authority for the proposition that except for the constitutional provision referred to, the Legislature has delegated to the Commission all the power which it had over rates, except such as it had expressly reserved to itself. We think, therefore, that even if the condition referred to was a valid one, the rates therein provided were and are subject to regulation by this Commission. (*Tonawanda Complaints v. International Railway Co.*, Albany Special Term, decided May, 1919, opinion by Hinman, J.)

COMMUTATION RATES

The commutation books as above stated are quite limited as to their operation, and the rates resulting from them run from 1.05 to 1.24 cents per mile, provided each ticket is fully used within the time limited for use. As commutation rates go the present rates are not low; they average higher than the steam railroad rates of 1.10 cents per mile generally in force, and higher than rates in use on other interurban trolley roads in the neighborhood.

The proposal of the company to abolish the commutation books seems to be based on the opinion of its management that such rates as to trolley roads are wrong in principle and should be discontinued as a matter of general policy. The views of the management were presented with some elaboration by the witness Barnes, general manager of the road, thus —

We have this peculiarity as compared with any other marketable commodity, that it is a necessity with us to manufacture the commodity

which we offer for sale, namely, transportation, at the moment when it is consumed. It is totally impossible for us to utilize the idle hours so far as the consumption of our product is concerned for the production at a uniform rate of the product to meet the demand when it comes. We must manufacture at the time when the demand occurs. That necessitates a disproportionately large investment in power equipment, in rolling stock, and a disproportionately large number of platform employees and employees of all kinds to handle this rush-hour transportation so called. By disproportionate, I mean with respect to what would be necessary were it distributed evenly over a ten, twelve, and eighteen or twenty-four hour day. Consequently, the fact is that with a highly concentrated peak-load, the cost of producing transportation for that peak-load is very much higher than the cost of producing the transportation for the load at any other time of the day.

Furthermore, it is urged in the brief of respondent's counsel that there is no analogy between such rates on steam roads as compared with trolley roads; that such traffic on steam roads is a byproduct; that while the cost to a steam road of performing additional service is slight, the cost to the trolley road increases in full proportion to the increase in traffic flowing from commutation business. While we are impressed that there is much reason in this presentation of the subject, still the proposition that on principle commutation rates on interurban trolley roads are unjust and unreasonable and should be abolished, presents a direct challenge to the clearly defined policy which we find embodied in the statutes of this State.

Thus section 49 of the Public Service Commissions Law, after clothing the Commission with power to fix the "rates, fares or charges" to be demanded by common carriers, proceeds in a separate paragraph to clothe it with like power to fix the rates to be charged for "excursion, school, or family commutation, commutation passenger tickets, half fare tickets for the transportation of children under six years of age or any other form of reduced rate tickets". There is thus clearly disclosed a legislative policy by which different rates are to be fixed for what may be termed "regular"

fares, and for commutation and other special classes of lower rate tickets. Reading both provisions together, they can only be construed to admit of differentiation in the classes of fares mentioned and expressly to sanction commutation fares on electric roads.

To this policy we must adhere, and the proposed elimination of the commutation and special rates is therefore disapproved.

Turning now to the proposed schedules of the Troy and Saratoga divisions, which are sufficiently similar in their revenue needs and other aspects to be treated substantially alike, we find a proposed rate of 3 cents per mile, based on a new zone layout which in substance makes a separate zone of each mile, with a minimum fare of 6 cents. This zone system and mileage rate is continued also over those parts of the interurban routes which lie within the Schenectady urban zone. This is clearly inadmissible because the rate for all passengers within the urban zone must be the same. The interurban rates must begin where the urban rates end.

SUMMARY

We find that to increase rates sufficiently high to meet the theoretical requirements of Table B will call for an extremely large increase on the Troy and Saratoga divisions. This increase would be largely out of proportion to the increase from 5 cents to 6 cents in the urban zone. An increase such as would be thus provided would we think be of doubtful advantage to the company by reason of the certain decrease in patronage which would result, and perhaps of doubtful justice because of the smaller proportionate increase which has been accepted by the company in the urban zone. The latter arrangement is for the limited period of one year, and we feel that a disposition of this case must be made, based not on the theoretical requirements shown above but on the treatment of the company's demand for relief from an emergency standpoint, in a manner which

will yield a substantial increase, well within its established requirements, with a view to reopening the case at the end of the year when the results of such changes as shall be authorized have been tried experimentally for the period named.

In this view of the case we think it would be unwise to make the radical change in the zone system suggested by the company. The existing zones have remained unchanged for many years and the patrons of the road have adapted themselves to them. We have prepared a tariff for these two divisions based on the existing zones, but with what may be called a floating zone feature which neutralizes to a large degree the inequality in fare brought about by a rigid zone system through the imposition of a full zone rate for the passenger traveling only in parts of zones. This tariff shows an increase of approximately 20 per cent in rates and will yield approximately \$50,000. This added to the \$190,000 estimate of increased income in the interurban zone will give a total increase in revenue of \$240,000. This is assuming that all of the theoretical increase will be realized, but this is by no means sure to be the result. This increase does not correspond with what we have shown to be the apparent requirements of the company based on the 1918 experience. By reason of increased wages and power costs, the gross income which will be left after charging operating expenses will be considerably smaller than in 1918. These rate increases however will give the company some return on investment and enable it to meet its most pressing financial needs.

The company may put into effect a 6-cent fare in the Schenectady urban zone, and may also put into effect on three days' notice the annexed tariff for the Troy and Saratoga divisions. No change will be allowed in the commutation rates; and all such rates, together with school and special rates on the entire system, will remain unchanged. No

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increase will be allowed on the Albany interurban division except as the 6-cent fare in the city of Schenectady effects an increase of one cent.

An order will be entered accordingly.

All concur.

Tariffs referred to in the foregoing memorandum:

SCHENECTADY RAILWAY COMPANY, TROY DIVISION

Between and	Zones	Present fares							Proposed fares						
		1	2	3	4	5	6	7	1	2	3	4	5	6	7
Schenectady to Morgan avenue	1	5¢							6¢ 20%						
Morgan avenue to Niskayuna	2	10¢	5¢						12¢ 20%	7¢ 40%					
Niskayuna to Lethams	3	15¢	10¢	5¢					18¢ 20%	12¢ 20%	7¢ 40%				
Lethams to Boulevard	4	20¢	15¢	10¢	6¢				24¢ 20%	18¢ 20%	12¢ 20%	7¢ 16⅓%			
Wiswall's	5	20¢	15¢	10¢	6¢				24¢ 20%	18¢ 20%	12¢ 20%	7¢ 16⅓%			
Watervliet	6	20¢	15¢	10¢	6¢	6¢	6¢		24¢ 20%	18¢ 20%	12¢ 20%	7¢ 16⅓%	6¢	6¢	
Green Island and Troy	7	26¢	21¢	16¢	11¢	6¢	6¢	6¢	30¢ 20%	24¢ 20%	18¢ 20%	13¢ 18%	11¢	6¢	6¢

SCHENECTADY RAILWAY COMPANY, SARATOGA DIVISION

Between and	Zones	Present fares							Proposed fares						
		1	2	3	4	5	6	7	1	2	3	4	5	6	7
Schenectady to Alplaus	1	5¢							6¢ 20%						
Alplaus to High Mills Road	2	10¢	5¢						12¢ 20%	7¢ 40%					
High Mills Road to Timesons	3	15¢	10¢	5¢					18¢ 20%	12¢ 20%	7¢ 40%				
Timesons to Brookline	4	20¢	15¢	10¢	5¢				24¢ 20%	18¢ 20%	12¢ 20%	7¢ 40%			
Brookline to Ballston Junction	5	25¢	20¢	15¢	10¢	5¢			30¢ 20%	24¢ 20%	18¢ 20%	12¢ 20%	7¢ 40%		
Ballston Junction to Leonards	6	31¢	26¢	21¢	16¢	11¢	6¢		36¢ 18%	30¢ 16½%	24¢ 12½%	18¢ 12½%	13¢ 15%	6¢	
Leonards to Saratoga Springs	7	37¢	32¢	27¢	22¢	17¢	12¢	6¢	42¢ 15%	36¢ 16%	30¢ 12½%	24¢ 10%	19¢ 12%	12¢	6¢

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of GEORGE W. LANE, AS MAYOR OF CORNING, *against* CRYSTAL CITY GAS COMPANY as to proposed increase in price of natural gas furnished customers. [Case No. 6340.]

1. Neither this Commission nor the Interstate Commerce Commission can require a Pennsylvania corporation producing natural gas in Pennsylvania to transport it and deliver it in the State of New York to a distributing company in this State. Such transportation and sale is, therefore, a matter of private contract between the Pennsylvania producing corporation and the New York distributing corporation.

2. Such a contract should provide a definite and certain price for gas sold, and it should not provide compensation in the way of a percentage of the revenues of the distributing company.

3. As the law has recently been declared by the Appellate Division, this Commission is without power, in order to aid in the conservation of natural gas, to discriminate between different classes of consumers. (*People v. Public Service Commission*, not yet reported.) It should not undertake to do indirectly what it is forbidden to do directly, by authorizing higher rates for large consumers than for small consumers.

4. On an examination of the evidence a rate is fixed of 65 cents per thousand cubic feet, with 7 cents discount for prompt payment, the rate to remain in effect for one year.

Decided May 29, 1919.

Appearances:

Justin V. Purcell, Corporation Counsel, Corning, for complainant; *Hon. George W. Lane* in person.

Thomas F. Rogers, Corning, and *Neile F. Towner*, Albany, attorneys for respondent.

Benjamin W. Wellington, President, *William M. Guernsey*, Superintendent, and *George S. Goff*, General Manager, for respondent.

E. B. Reeser, New York city, Vice-president, and *W. H. Richards*, Port Allegany, Treasurer, Potter Gas Company.

B. F. Whitbeck, Consulting Engineer of respondent.

IRVINE, *Commissioner*:

In this case the Commission made an order July 9, 1918, following a complaint by the mayor of the City of Corning against a proposed increase in price of natural gas furnished by the respondent, directing cancellation of the tariffs making said increase and the restoration of its former rates (VII Public Service Commission, Second District, Reports 180). August 22, 1918, a further order was made authorizing either complainant or respondent on or after December 1, 1918, to apply for a vacation or modification of that order. The reason for denying the increase was that in the past the company on its former rates had made a fair return on the value of its property, and that while the new tariffs had been filed on the theory that the respondent would no longer be permitted to supply gas for industrial purposes and its income would thereby be seriously reduced, the supply for industrial purposes had not then been cut off and that there was not then existing any order of the United States Fuel Administration requiring the respondent to discontinue such service. Subsequently, on November 8, 1918, the United States Fuel Administration made an order applying to this respondent and to other companies in similar territory restricting the use of natural gas by consumers to 12,000 cubic feet per month except under special permit to be issued by the Fuel Administrator of the State of New York. This order in effect so restricted domestic consumption and practically excluded industrial use. The respondent thereupon asked to reopen the case as provided in the August order. Further hearings were held and much evidence received as to operating revenues and expenses under the new conditions. The case was not submitted until about March 1, 1919. Since that time it has not been possible to make a definite determination because of the uncertainty as to continued federal regulation coupled with uncertainties as to the future cost of gas to the respondent.

Federal regulation through the war time fuel administration has now ended. All the gas supplied by the respondent

is purchased by it from the Potter Gas Company, a Pennsylvania corporation, which produces its gas from fields in Pennsylvania and delivers through long transmission lines the Corning supply at the city limits not far from the state line. While the transportation of natural gas through pipe lines from one state to another state is interstate commerce (*Public Utilities Commission for State of Kansas et al. v. Landon et al.*, 39 Supreme Court Reporter 268; *Re Pennsylvania Gas Co.*, 225 N. Y. 397), Congress has not taken over the regulation of that particular industry. Indeed, it has expressly excepted it from the operation of the Interstate Commerce Commissions Law (Interstate Commerce Commissions Law, section 1). It is quite clear, therefore, that this Commission can not require a Pennsylvania corporation producing gas in Pennsylvania to transport it and deliver it in the State of New York, and that the Interstate Commerce Commission is likewise powerless. If there exists such a power, and it seems that there does, it is a power vested in Congress and by it not yet exercised. There is no available source of supply for the Crystal City Company at present except through purchasing from the Potter Gas Company. It is possible that this Commission might fix a price at which the Potter Gas Company should sell if it sold at all, but as the Commission can not require it to supply gas in the State of New York, the exercise of such a power to fix the price, if such power exists, would merely say, sell at this price or keep out of the State. The situation manifestly does not demand such action, and regulation of price between the Potter Company and the Crystal City Company becomes, so far as the Commission is concerned, an academic question; and so far as the two gas companies are concerned, a matter of private contract.

The Potter Gas Company supplies a number of distributing companies and consumers in the State of Pennsylvania. It also sells gas to the Elmira Water, Light and Railroad Company, furnishing gas in the city of Elmira; and to the Addison Gas and Power Company, supplying the village of

Addison; as well as to the respondent, supplying gas in the city of Corning. As in the case of many natural gas contracts between producing and distributing companies it has in the past received a certain percentage of the revenues of the distributing company as the price for gas sold. The Commission has heretofore commented on the undesirability of this basis of payment. On this application the question was sharply presented because, considering that if the Crystal City Company is entitled to an increase in order to enable it to earn a fair return on its investment, to permit the increase would automatically increase the price paid to the Potter Gas Company, so that in order to give the Crystal City Company \$1000 additional income it might be necessary to award it \$3000 additional revenue. On the other hand, the producing company may justly be entitled to an increased price for gas sold to the distributing company, and to permit this would require an additional increase in rates to the consumer which might yield to the distributing company an unduly high return. This matter was brought to the attention of the Potter Gas Company and it was requested so to modify its contract as to provide a flat rate per thousand cubic feet for gas sold to the respondent. The Potter company recognized the justice of this request, but insisted that with its failing fields, the constantly increasing expense of developing new wells with lesser production, and with its asserted ability to dispose of all the gas now produced to Pennsylvania customers nearer its field at less expense but at higher prices than it has been receiving from the three New York communities, the price to the New York communities must be increased if it is to continue to supply them. Accordingly it made an offer to the Crystal City Company to supply gas at 38 cents per thousand cubic feet, and this offer has been accepted by the Crystal City Company. As is to be inferred from what has already been stated, the Commission has no control over this contract. There is no evidence of any community of interest or ownership between the Potter Company and the Crystal City Company. In fact the evi-

dence is that there is no such community. It was a matter of bargain and sale, and the Commission is satisfied from what it knows of the negotiations that the Crystal City Company has obtained as good a bargain as it was able to obtain. In considering this case, therefore, we must treat the new price of 38 cents a thousand cubic feet as an established operating cost to the Crystal City Company.

The rate proposed in the application of the Crystal City Company is based on the theory of conservation, to wit, 70 cents net for the first 5000 cubic feet, 80 cents net for consumption between 5000 and 12,000 cubic feet, \$1 per thousand for all over 12,000 cubic feet per month. Every one having any familiarity with the natural gas industry realizes that the supply is failing, and the Commission is aware from evidence in this and in other cases that in the communities supplied in this State by the Potter Company there is in cold weather, when gas is most needed, an inadequate supply. The object of presenting these tariffs, which offer what may be termed an "inverted block rate," is solely to conserve the supply. It is cheaper to supply a single large consumer than a number of small consumers, but it was hoped that by making the expense greater for higher consumption indirectly industrial use would be prevented and domestic use curtailed. One matter which has delayed the decision of this case was the pendency in the Appellate Division of proceedings on certiorari to review an order of the Commission undertaking to accomplish directly what the inverted block scale seeks to accomplish indirectly. The order referred to divided consumers into two classes, industrial and domestic, and undertook to protect the domestic consumer by forbidding use by industrial consumers during the winter months, with certain exceptions not necessary here to set forth.

Within the past two weeks the Appellate Division has annulled this determination of the Commission, and in effect held that the Commission is without power to "overcome the shortcomings or failure of nature" by "depriving some con-

sumers of gas in order that others may have more". (*People ex rel. Pavilion Natural Gas Company v. Public Service Commission, Second District*, not yet reported.) Pending a review of this decision by the Court of Appeals, or if the decision should be affirmed then further legislation, the Commission is not disposed to attempt to do indirectly what the court has said it had no power directly to accomplish. However disastrous the consequences may be to the natural gas industry and more particularly to domestic consumers, the Commission feels required under present circumstances to fix a uniform rate for all consumers, but this should be fixed for a rather limited period merely awaiting the result of further judicial or legislative action.

The case has, therefore, entirely changed its aspect since its submission: first, by the removal of the federal restrictions on use; and second, by the determination of the Appellate Division in the Pavilion case. As the evidence, however, is as complete as it can probably be made on the essential elements of a rate case, it is deemed better to make a decision now rather than to hold further hearings and incur further delay and expense without the promise of having much additional light thrown on the problem.

The first step in ascertaining the rate is to obtain some figure upon which a fair return is to be based. In the decision of July 9, 1918 (VII Public Service Commission, Second District, Reports 180), there was no finding as to this amount, but the conclusion was that, taking the evidence most favorable to the company, it was not entitled to an increase. In the present record there is evidence of reproduction cost new, but this method of valuation is not by the Commission deemed satisfactory where better evidence is available (*Proposed Schedule of Rates fixed by Iroquois Natural Gas Company*, decided April 24, 1919). In the instant case much study has been devoted by experts of the Commission to the calculation of actual investment costs as reported year by year to the Commission. To the cost of tangible fixed capital has been added 15 per cent of the calculated original cost as

legitimate and actual intangibles. This amounts to \$12,862. Working capital is also added. This amount has been ascertained by taking the sum of the balances of the accounts covering materials and supplies, accounts receivable, special deposits and similar items, and as of the year ending December 31, 1918, it amounts to \$31,986. The result of this method of computation is as follows:

Tangible fixed capital.....	\$112,182
Intangibles	12,862
Working capital	31,986
	<hr/>
	\$157,030

The Commission does not commit itself to this as a permanent valuation of the property of the company. It is perhaps a low valuation, but as it is evident that the rate to consumers must in present conditions be considerably increased, and as like conditions forbid at this time the fixing of a rate for any extended period, we shall proceed on that figure in estimating a return. The company's estimate of reproduction cost new is \$180,536, and that of the city \$146,912.

An item involving in its very nature a large element of conjecture is the probable volume of gas to be sold under the new rates. Domestic consumers used from May 1, 1918, to April 30, 1919, 215,000,000 cubic feet. What industrial consumption there may be under the new rates or the extent of the reduction of domestic consumption caused thereby are matters of pure guess work. It is assumed that industrial consumers even without legal restraint will recognize the justice of conserving the remaining supply for domestic use. That there will be some industrial consumption is certain. Estimating, therefore, the probable consumption for the forthcoming year as 225,000,000 cubic feet, and the amount of gas to be purchased at 237,000,000 cubic feet, the difference being allowed for "leakage," which term is used to indicate the difference between the gas supplied at the meters of the Potter Company and the gas sold through meters of consumers, we are enabled to reach the following prospective

income account. The figures, except as already stated, are derived from the evidence offered by the corporation.

Average net price to consumers per M cu. ft. 58c.	
Revenue from sale of 225,000 M cu. ft. gas.....	\$130,500
Other operating revenue (1918 figures).....	860
Total operating revenue.....	\$131,360
Revenue deductions:	
Gas purchased, 237,000 M cu. ft. at 38c....	\$90,080
Depreciation	5,609
Other operating expenses.....	20,461
Taxes	4,061
Uncollectible bills	149
	120,340
	\$11,020
Rate of return on investment of \$157,080 (estimated original cost without deduction of depreciation reserve).....	7%

It must be remembered that the natural gas industry is not one capable of future development. Some time the supply will be exhausted. In the language of old wills, "Realizing the certainty of death and the uncertainty of the time thereof," some allowance must be made for the amortization of the existing investment. For this reason the Commission has taken the foregoing estimate of value without deducting depreciation reserves. To have done so would have led to somewhat intricate and necessarily inexact counter allowances without effect on the result.

An order should be entered authorizing the company to file a tariff on one day's notice based on a rate of 58 cents net to all consumers. The gross rate may be fixed at 65 cents with 7 cents discount for prompt payment, and this rate should remain in effect for one year and thereafter until otherwise ordered by the Commission.

Chairman Hill and Commissioners Fennell and Kellogg concur; Commissioner Barhite not present.

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of the MAYOR OF THE CITY OF SARATOGA SPRINGS *against* ADIRONDACK ELECTRIC POWER CORPORATION as to prices for gas furnished the public in said city. [Case No. 6538.]

Decided May 29, 1919.

Appearances:

John Slade, Saratoga Springs, as attorney for complainant.

Brackett, Todd, Wheat & Wait (by B. P. Wheat), Saratoga Springs, as attorneys for respondent.

D. C. Burke, Oneida, City Attorney of Oneida, in person.

Edward E. Eddy, Saratoga Springs, in behalf of Business Men's Association of Saratoga Springs.

HILL, Chairman:

The Adirondack Electric Power Corporation furnishes illuminating gas in the city of Saratoga Springs. Prior to August 15, 1918, its flat schedule for gas in said city was \$1.45 per M cubic feet, with 10 per cent discount for prompt payment of bill. It has put into effect a tariff which became effective on the last named date, under which it is charging \$1.70 per M for the first 25,000 cubic feet, and \$1.50 per M for all over 25,000 cubic feet, with a discount of 10 cents per M for prompt payment. Substantially all consumers take less than 25,000 cubic feet a month, so that the relative prices in the two schedules may be considered as \$1.30½ per M in the former schedule as against \$1.60 per M in the superseding schedule.

The superseding schedule has been made the subject of a complaint on behalf of the mayor, who claims that such price is excessive and unjust and unreasonable. The complaint has been heard by the Commission, evidence taken, and briefs by the respective sides submitted.

VALUATION

It is difficult to get a satisfactory rate base in this proceeding, due to a lack of coherence in the records of the company. It is true that there are on record in various places in the Commission's files a number of different appraisals, and it is only by qualification and reconciliation of the various sets of figures, followed by comparison, that it is possible to determine somewhat arbitrarily upon a total which it seems fair to accept. In order to accomplish this result it was necessary to estimate the probable depreciation which has accrued upon the depreciable property of the company between the time as of which the several valuations were made, and July 1, 1918, which appears to have been the date of the valuation filed by the company in the case. For the purpose of the calculations herein, depreciation has been computed by applying to the valuations depreciable property rates which the experience of this Commission has found to be applicable to gas companies of like character to this company. It is pointed out that said valuations are assumed to represent the depreciated value at the time at which such valuations were made, and that if the depreciation rates had been applied to the estimated original cost the aggregate depreciation allowances would have been somewhat larger, and the depreciated value at July 1, 1918, correspondingly lower.

Reference No. 1: The valuation introduced in evidence by the respondent in this case upon the replacement value theory at July 1, 1918 (presumably replacement and value new at present prices), shows \$602,932.50, with a depreciated replacement value of \$381,681.34. Some figures that this Commission has dealt with recently relative to gas construction [Niagara Light, Heat and Power Company] contain a reference to the effect that present day prices are 30 per cent in excess of normal. If the above figures were reduced on the same basis the results would be — probable normal cost — \$463,794.23, depreciated normal cost \$293,601.03. Adding to the latter as working capital \$25,000 produces \$318,601.03.

Reference No. 2: In a report made by the receivers of the Saratoga Gas, Electric Light and Power Company the "value" of the gas property as of January 11, 1909, is said to have been \$287,940.70. It is assumed that the above amount represented the then apparent or depreciated value. Calculations have been made to estimate the depreciation which has accrued upon the property represented by the above amount from 1909 to July 1, 1918, upon the basis as stated hereinbefore, and which show such accrued depreciation aggregating \$62,367.50, leaving the depreciated value at July 1, 1918, \$225,573.20. There were additions to the company's fixed capital between 1909 and 1918 aggregating \$15,331.01, and it is estimated that depreciation has accrued with respect to such additional property to the extent of \$2082.24, leaving as the depreciated value of the fixed capital additions between 1909 and 1918 the amount of \$13,248.77, making the total depreciated value in connection with this valuation \$238,821.97. If to this figure is added the estimated working capital of \$25,000, the amount of \$263,821.97 is arrived at, this being about \$55,000 less than the figure arrived at in the preceding reference.

Reference No. 3: Incident to the 1907 rate case, Mr. Forstall, an engineer witness for the company, fixed a valuation for the plant in the amount of \$275,340, and it is assumed that said valuation was based upon the then present value, which would contemplate observed depreciation as computed by the engineer at that time [1907]. Calculations tending to show the estimated depreciation from 1907 to July 1, 1918, inclusive, show such estimated depreciation to aggregate \$70,513.90, leaving as depreciated value at July 1, 1918, \$204,826.10. There have been additions to the property between the approximate date of that valuation and December 31, 1918 [it was not possible to segregate the expenditures for 1918 so as to show the total to July 1], aggregating \$22,419.39, and it is estimated that depreciation with respect to said property additions has accrued to the extent of \$4277.64, leaving as the depreciated value of the

fixed capital additions between 1907 and 1918, \$18,141.75, making a total of \$222,967.85; and if the estimated allowance for working capital of \$25,000 is added, there results the amount of \$247,967.85.

Reference No. 4: Mr. A. D. Adams, another engineer witness in the 1907 rate case, presents a valuation showing a value new of \$216,788, and a depreciated value of \$153,062. Mr. Adams failed to include, however, one-half of the value of the office building and lot, and the value of the lot at the plant, and if the figures used in the valuation made by the receivers are inserted to remedy this deficiency, \$17,400, there results an aggregate of \$170,462. Against this figure, also, the estimated accrued depreciation with respect to such depreciable property between 1907 and July 1, 1918, has been applied, amounting to \$45,073.10, which leaves a depreciated value at July 1, 1918, of property represented by the valuation as of 1907, in the amount of \$125,388.90. If to this amount is added the cost of additions to the property between the approximate date of that valuation and December 31, 1918, of \$22,419.39, less the estimated accrued depreciation upon such property, \$4277.64: \$18,141.75, there results the sum of \$143,530.65, to which is added the allowance for working capital of \$25,000, giving a total of \$168,530.65.

Reference No. 5: The actual cost records are very obscure, and it is difficult, or almost impossible, to secure any accurate index as to what the original cost of the property of this company may have been. In the report of the Saratoga Gas, Electric Light and Power Company for the year ended December 31, 1910, however, the amount of \$81,509.97 is shown as directly applicable to the gas department, with an additional sum of \$136,458.84 under the caption "Bonds issued for property which from the books of the company we are unable to divide between gas and electric". Even if this latter entire amount is assumed to be applicable to the gas department, there would be a total of but \$217,968.81 as the undepreciated cost in 1910, while the addition of the actual

expenditures made between 1912 and 1918, amounting to \$15,331.01, will produce but \$233,299.82 as the undepreciated cost at the latter date. Adding to this the working capital as in the other calculations in the amount of \$25,000, there results a total of \$258,299.82. Inasmuch as records are not available to show the nature of the investment of the greater part of this amount, it has not been possible to estimate the amount of the probable depreciation applicable to the property represented.

Following is a recapitulation of the results of the several calculations shown above:

Reference No. 1: Depreciated replacement value (reduced 30 per cent) plus working capital, \$318,601.03.

Reference No. 2: Valuation (presumably depreciated) as shown by receivers in 1909, adjusted to show the fixed capital additions to 1918 and the estimated accrued depreciation upon the whole for the period 1909 to 1918, plus working capital, \$263,821.97.

Reference No. 3: Valuation (presumably depreciated) made by Engineer Forestall (company witness) incident to 1907 rate case, adjusted to show the fixed capital additions from 1907 to 1918, and the estimated accrued depreciation upon the whole for the period 1907 to 1918, plus working capital, \$247,967.85.

Reference No. 4: Valuation (depreciated) made by Mr. Adams (witness for the Village of Saratoga Springs) incident to 1907 rate case, adjusted to show fixed capital additions to 1918 and estimated accrued depreciation upon the whole from 1907 to 1918, plus working capital, \$168,530.65.

Reference No. 5: Apparent book cost 1918 (with no depreciation deducted) plus working capital, \$258,299.82.

It will be noted that the results arrived at in the first three calculations are not widely divergent, and in view of the known lack of reliability in the book figures reflected in Reference No. 5, and also the lack of knowledge as to the qualifications of Witness Adams, whose valuation has been used in Reference No. 4, it is felt that the similarity between

the results arrived at in the above mentioned first three references is the most tangible and reliable basis available for the purposes of this proceeding, in view of which it would appear that a rate base of \$250,000 would be reasonably correct and not unjust. I have therefore adopted a property valuation of \$250,000, to which we will add \$25,000 for working capital, thus producing a sum upon which return should be based of \$275,000.

EARNINGS

For the year 1918, assuming that the old schedules remained in effect for the entire year, the following operating statement has been prepared:

Estimated gross revenue based on old schedules (actual gross revenue for 1918 is not used on account of the fact that during the last four and a-half months of that year the new schedules were in effect), \$66,506.54; actual operating expenses and taxes, \$53,650.26: gross income, \$12,856.28. If we allow the same amount for depreciation, namely \$4500, there remains a balance of \$8356.28 applicable to dividends and surplus.

On May 16th the case was opened and further evidence taken with a view to determining the probable trend of revenue and operating expenses which would indicate the probable outcome for the year 1919. These figures show that for the first three months of the current year the revenue at the new rates was \$15,062, against \$12,892 at the old rates for a like period in the year 1918, while the operating expenses were \$11,929 as compared with \$10,263 in the year 1918, and gross income for the period \$3133 as compared with \$2629 for the year 1918. There is thus indicated an increase in gross income due to the new rates of 19 per cent for the entire year, amounting to \$2442, which added to the gross income of 1918, as shown above, amounting to \$12,856, gives us \$15,298 as the estimated gross income for 1919; and if we deduct from this the same

amount of depreciation, namely \$4500, we get \$10,798 as net income applicable to dividends and surplus.

From all the evidence there is no reasonable prospect that the company's showing will be any better than this for the year 1919. Applying this resultant figure to the valuation of \$275,000, we have a return on investment of 3.9 per cent.

The net earnings without deduction for depreciation for a five-year period, including the foregoing estimates for 1918 and 1919, appear to be as follows: 1915, \$15,751; 1916, \$18,178; 1917, \$20,435; 1918, \$12,856 (old rates); 1919, \$15,298 (new rates).

It is thus apparent that the increased rates fail to keep the net earnings up to the average for the period, and also that there have been no excessive earnings during the period which can be spread over present or future earnings. This graphic decline in net earnings is attributable to the sharp advances in general operating costs, more particularly in the costs of coal, oil, and labor which took their rise in 1917 and have since continued. It has been hoped that the increased costs would by this time show a tendency to decrease, but so far this hope has been disappointed, and there are no facts in the record or within the knowledge of the Commission from which it seems reasonable to assume that there is any immediate prospect of material decreases in the costs of any of these items.

As shown above, the prospective net earnings for 1919 are a fraction under 4 per cent in the way of return on investment, which no one will claim is an adequate rate. The Commission has the power to authorize an increased price greater than that proposed by the company. It is doubtful, however, whether a higher price would not have the effect of turning away custom to such an extent as to avail nothing in increased net earnings. Furthermore, the evidence discloses that the Adirondack Company, which in addition to its gas business in Saratoga Springs supplies that city with electricity, encouraged the city authorities to substitute electricity for gas in its street lighting. This

business yielded the gas department in 1916 over \$1100 in net earnings. While we can not criticize the company for practically abandoning this business in favor of its electric lighting department, still we think the fact may be properly taken into consideration in determining the merits of this controversy, because, if the company sees fit to pursue a policy as between the two departments which tends to superseding gas output with electric output, it is questionable to what extent it can require the consumers of gas to contribute toward the resulting loss.

The Commission will not under the circumstances increase the rates beyond those specified in the superseding schedule under consideration. Those rates are approved for the period of one year from the date of the order which will be entered, and thereafter until the further order of the Commission.

Commissioners Irvine, Fennell, and Kellogg concur; Commissioner Barhite not present.

Petition of RUTLAND RAILROAD COMPANY under section 54 of the Railroad Law as amended by chapter 564 of the laws of 1915, for consent to the discontinuance of its Woods Falls station, Clinton county. · Renewal of Petition, United States Railroad Administration. [Case No. 6280.]

Decided May 29, 1919. ·

Appearances:

J. F. Carrigan, Malone, Assistant Superintendent Ogdensburg Division, and *J. A. Proctor*, Rutland, Vt., Traveling Freight Agent, for Rutland Railroad Company, petitioner.

J. M. Cantwell, Malone, as attorney for petitioner.

Shedden & Pierce (by Walter C. Pierce), Plattsburgh, for P. H. Kennedy and Mountain Lumber Company, in opposition.

M. Y. Ferris in behalf of a number of residents of Clinton county as appears by petition filed at the hearing February 6, 1919.

FENNELL, Commissioner:

This is a renewal of an application made by the Rutland Railroad Company in November, 1917, for leave to discontinue a sidetrack and freight service at Woods Falls station, Clinton county, N. Y. Upon the original application, which was denied, the privilege of renewing the same was given at any time after October 1, 1918. The present application is an amendment of the original one, and includes a request to discontinue the passenger station as well. Woods Falls is a flag station without a station building or agent. It is 2½ miles west of Mooers Forks, and 3.3 miles east of Altona.

The company urges that the station be discontinued for the reasons that there is only a limited amount of freight

business; that few passengers are accommodated; that the curve and grade at the place of the switch produce a dangerous condition.

One shipper testified that he had several hundred cords of his 1918-1919 cut ready to ship from the station, and that he had not finished shipping the 1917-1918 cut; also that he had about ten thousand cords of wood uncut, the outlet of which would be Woods Falls station; that it costs from \$2 to \$2.50 a cord to draw pulp wood from Woods Falls to either Mooers Forks or Altona.

Of course it is true the eastbound trains are running against the points of the switch, but, with a single track road, traffic in one direction or the other must run against switch points. The conditions surrounding this switch do not seem to be any more dangerous than is usual with switches of the same class. The passenger traffic is very small, but caring for it requires no expense except the cost of stopping and starting a train when a passenger desires to board or alight. The passenger service should be continued as at present. However, as the freight traffic seems to consist almost entirely of pulp wood shipments, it would seem to be a reasonable provision that the switch be spiked and out of service except during those portions of the year when the bulk of the wood is being shipped. If the company was given notice, it could in a few hours have the spikes drawn, the switch lamp restored, and the switch in operation. The switch should not be maintained indefinitely for the purpose of getting out a few cars of pulp wood a year. The pulp wood dealers should proceed expeditiously to get out the pulp wood tributary to this switch so that the same may be discontinued. The company should be permitted to discontinue the use of the switch, except during the pulp wood shipping season, the time of discontinuance to be agreed upon by the railroad company and the pulp wood shippers, and in case of their inability to agree the Commission will, upon request of either the railroad or the shippers, fix the time of discontinuance.

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After a reasonable time for shipments of the 1919-1920 cut the railroad may again move to have this switch discontinued.

Chairman Hill and Commissioners Irvine and Kellogg concur; Commissioner Barhite not present.

In the Matter of the Petition of the UNITED STATES RAILROAD ADMINISTRATION, NEW YORK CENTRAL RAILROAD, as to changes at Akron Falls and Pembroke stations. [Case No. 6827.]

When a public utility corporation is not a success financially, care and attention must be given to its management for the purpose of correcting any deficiency in income, and an interference with the convenience and necessities of the public should be one of the last and not one of the first means employed to correct the situation.

Decided June 3, 1919.

Appearances:

Messrs. Maurice C. Spratt and H. W. Huntington, attorneys, for the United States Railroad Administration.

Hon. Edward A. Washburn, attorney, for Town of Pembroke and certain individuals opposed to making Pembroke a non-agency station.

J. L. Taylor, Esq., President of the Village of Akron, and representing Akron Board of Trade.

Wilbur J. Childs, Esq., in person.

BARHITE, Commissioner:

This is an application by the United States Railroad Administration, among other things, to dispense with the services of an agent at the station known as Pembroke, on a branch line of the New York Central railroad running from Canandaigua to North Tonawanda. Pembroke is a small unincorporated village of about two hundred and fifty inhabitants, surrounded by a rich and prosperous farming community. The station with its present advantages has been established for a great many years. The Railroad Administration proposes not to abolish the station but to dispense with the services of the station agent, who performs not only the usual duties of that position but acts also as express agent and telegraph operator. To be relieved of the expense of this agent, coupled with the claim that the public

can be well served if the station is put in charge of a caretaker, who can be hired at a much less figure than the amount paid the agent, is the basis of the petition on the part of the United States Railroad Administration.

The reasons why this application should not be granted, which are so marked in this case, are present, and apply with a greater or less degree of force to similar requests now pending before this Commission and make this memorandum applicable to those cases.

The business transacted at Pembroke station from 1913 to 1917 inclusive appears by the following table furnished from the records of the company:

Year	Number shipments l. c. l. sent and received	Car lots sent and received	Freight earnings	Tickets sold	Ticket revenue
1913.....	1,409	114	\$4,300.23	2,545	\$909.83
1914.....	1,377	151	6,071.30	2,550	892.94
1915.....	1,256	110	3,968.71	2,685	803.42
1916.....	1,300	87	3,296.76	2,697	773.18
1917.....	1,202	100	2,430.82	2,517	730.35

The above figures do not include a small amount of business transacted at Pembroke on behalf of Falkirk, a non-agency station. As it is proposed to change the name of Falkirk to Akron Falls and make an agency station at that point, no further business from that station will accrue to Pembroke. In 1918 the freight business amounted to \$14,007.74, passenger tickets to \$571.88, milk business \$2429.72. The express business amounted to about \$43.40 per month, or \$520.80 per year. Of the freight business, \$8736.24 was received for road material used in the repair of state roads in that vicinity, leaving \$5271.50 received from ordinary freight. The present agent also acts as express agent and telegraph operator. If the company dispenses with his services, the telegraph office must be closed. It was suggested that the caretaker to be employed in place of the agent might act as express agent, but there is no assurance that such will be the fact. The present agent is

paid the amount fixed by the United States Government officials: forty-eight cents per hour for eight hours, and seventy-two cents per hour for overtime; and the station is open for practically twelve hours and thirty minutes per day, making a daily wage for the station agent of \$7.08. Besides, he draws a small amount as agent for the express company. For the month of April, 1919, the agent actually received \$164.50. The first proposition of the petitioner proposed to employ a caretaker in place of the agent during the winter months, whose duties would principally consist of caring for the lighting and heating of the station whenever necessary. Later, as the case developed, the proposition was changed, and it was proposed that the caretaker should do everything but bill the freight and sell the tickets. If the caretaker is to perform substantially the duties of the agent, and the salary now paid to the latter is reasonable in amount, it is quite difficult to understand how much money will be saved simply by changing the title of this representative of the road.

Under the proposed new system, all passengers from Pembroke must pay their fare on the train; all baggage to be checked must be placed where it can be readily reached by the train crew; and the passenger must, after boarding the train, reach the train baggagemaster in order to procure a check. All incoming freight must be prepaid; outgoing freight will not be billed until it reaches a point where there is an agent, who will be expected to make out the proper receipt and return it by mail to the shipper. Under the present system, when freight is delivered to an agent it is put into possession of the railroad company, and in case of loss or damage the receipt of the agent furnishes very substantial evidence of the condition, kind, and quantity of the goods when received by the company. Under the proposed system, a substantial interval must elapse between the time the shipper surrenders the possession of the property and the time when an agent returns the receipt by mail, and it might

be very difficult to establish any change in the condition, quantity, or kind of goods which occurred in the meantime. There is evidence to the fact that frequently goods are stolen in transit, shipments to different parties become mixed, and that some portions of a shipment are delivered at the proper station and other portions carried to the wrong station. Naturally, the patron of the road depends upon the local agent to adjust these various troubles; a letter to the company would not bring very speedy results. It appears that the freight service is so bad at the present time that shippers have been compelled to patronize the express company with its higher rates. One florist and importer and exporter of bulbs testified that his shipments and receipts of freight are mostly by express on account of the condition of the freight service. His shipments weigh at times from one thousand to fourteen hundred pounds; one in value was worth \$2800.

Without pursuing the details further, it is quite evident that to dispense with an agent at Pembroke would seriously inconvenience the public in its use of that station.

The rates charged by the railroads for both passenger and freight service have been enormously increased within a very short period of time. If with such added burdens upon their patrons the roads are not now a success financially, the first thought should not be to add still further to the load of the public by decreasing the quality of the service. During the period of the war every patriotic citizen was not only willing but anxious to undergo inconveniences and privations if they were deemed necessary or helpful by the public authorities in reaching a successful issue of the conflict. Now that business matters are resuming their normal condition, more care and attention must be given to the management of public utilities for the purpose of correcting deficiencies in income, and an interference with the rights and conveniences of the public should be one of the last and not one of the first means employed to correct the situation.

All concur.

In the Matter of the Complaint of GEORGE W. WHITEHEAD,
AS MAYOR OF THE CITY OF NIAGARA FALLS, *against*
NIAGARA FALLS GAS AND ELECTRIC LIGHT COMPANY *as*
to gas rates and as to service. [Case No. 6548.]

GOING VALUE: Discussion of claim for going value where company has been unsuccessful and after period of seventeen years shows accrued deficit in excess of investment.

RATES: Fixed on what the traffic will bear instead of being based on a return on claimed value of property, under peculiar facts of the case.

Decided June 12, 1919.

Appearances:

Robert J. Moore, Corporation Counsel, Niagara Falls, as attorney for complainant.

Dudley & Gray (by Mr. Gray), 45 Falls street, Niagara Falls, as attorneys for respondent.

HILL, Chairman:

The complaint is on behalf of the City of Niagara Falls against both service and rates with respect to gas.

Prior to August 15, 1918, the schedule of rates for gas was as follows:

Under 2000 cubic feet per month, \$1.90 per M, less 20 cents for prompt payment.

2000 to 20,000 cubic feet, \$1.44, less 20 cents.

20,000 and over, \$1.20, less 20 cents.

The superseding tariff which is the subject of complaint, and which became effective August 15th, provides for a uniform rate of \$2.20 per M cubic feet, less a discount of 10 per cent for prompt payment, or \$1.98 net.

The respondent company was incorporated in the year 1900, and about a year thereafter took over the plant of the Niagara Falls Gas Company which was constructed about

1860, and has ever since continued to operate the same. It also has a small electric light plant.

The Commission has no records before it covering the first six years of the plant's operations, but beginning with the year ended June 30, 1906, the company has filed fairly complete annual reports either with this Commission or with its predecessor, the Commission of Gas and Electricity. From these reports has been compiled a table showing the principal items of the company's income account for the period from June 30, 1905, to December 31, 1918.

It will be noted that the company's electric business which did not begin until 1907 has been inconsiderable, although showing a tendency to gradual increase in both gross and net revenue up to 1915. Since then there has been a falling off. The company's main source of income is its gas business. The revenues from this source have slowly increased, and up to 1916 the tendency was for the expenses to increase rather less rapidly, leaving a growing net operating revenue, which was, however, never sufficient to meet interest charges. In 1917 the operating income from gas sales dropped suddenly, from \$21,128 to \$887; and in 1918 there was a net operating loss of \$8039. This great decrease in operating income appears to have been due to a sudden rise in operating costs. At no time has the total operating income from both electric and gas operations been sufficient to pay the full interest charges, and the company's book deficit has therefore steadily mounted from \$31,234 at June 30, 1906, to \$476,143 at December 31, 1918.

The sudden increase in the deficit during 1917 was due to an adjusting entry which made a total extra charge in that year of \$260,864. This included a reduction in fixed capital assets of \$193,093; in miscellaneous investments of \$11,184; in materials and supplies of \$203; and an additional appropriation to the depreciation of \$56,385. These charges, of course, represent losses which were not properly



a part of the 1917 business, but which should have been recognized currently during the preceding years as they occurred.

A condensed balance sheet for the company as at December 31, 1918, is as follows:

<i>Assets Side:</i>	
Fixed capital, electric.....	\$42,000
Fixed capital, gas.....	274,235
Materials and supplies.....	8,163
Current assets	13,997
Prepayments	2,338
Deficit	476,143
Total	\$816,885
<i>Liabilities Side:</i>	
Capital stock	\$150,000
Mortgage bonds	150,000
Bills and accounts owing to Niagara Falls Electrical Transmission Co.	370,452
Third mortgage bonds matured and unpaid.....	51,500
Miscellaneous unfunded debt.....	25,186
Reserve for accrued depreciation.....	69,797
Total	\$816,885

In the foregoing the balance in the depreciation reserve results chiefly from the appropriation of \$56,385 in 1917, already referred to, which was made in that year to bring the reserve up to a figure believed to be the minimum reserve that could reasonably be considered adequate. Of course this is merely a recognition of the company's liability for retirement losses not yet realized, and does not imply that the company has a fund of this amount either specifically set aside or invested, or represented among its assets without specific segregation.

VALUATION

The property of the company has been the subject of examination by the Commission, the capital transactions to December 31, 1916, having been reviewed in a prior case [No. 5892]. According to the results of this review, the fixed capital used and useful in the public service in the gas department, as later brought down to August 31, 1918, and as shown by the books of the company, amounts to \$274,153.08, but without any deduction for depreciation.

This property was examined and valued on a basis of

reconstruction new by the city's expert Forestall in 1918, and in his report in evidence he states at page 22 that the "Fixed Capital, Gas," should be reduced by about \$8500 and should not be more than say \$265,000. On page 23 he states, however, that the capital figures are subject to "a certain amount of depreciation," but owing to the showing as to rate of return he did not consider it necessary to say by what amount the total should be reduced each year on account of depreciation. We therefore have no calculation of depreciation.

The financial history and condition of its physical property, the question of the adequacy of its plant, its service, and the past and present business policy of the respondent as shown by the record disclose a somewhat unusual situation which it will be necessary to discuss at some length.

While it is doubtful that the company can fairly substantiate a valuation of its physical property in excess of that carried on its books and above referred to, it appears that during its entire history it has operated unsuccessfully and unprofitably, the result being that it now has a bonded and floating debt as shown by its annual report for the year 1918 of \$597,087.18, and this does not include the large liability of \$69,797 which it has entered upon its books to cover amortization.

From any point of view these figures indicate that the company is in an extremely unsatisfactory financial condition, and this is more striking when we consider that its prices for gas which it now seeks to supersede were relatively high. When we examine the operating conditions we find that the gas plant was constructed about 1860. It was purchased in 1901 by the present company, at which time it had about nine miles of mains. In 1901 the plant was rebuilt. Between that date and 1913 about sixteen additional miles of mains were laid and a new holder and bench were installed. Recently a small auxiliary plant was constructed, not by the company but by parties interested

in it, which furnishes about 40,000 cubic feet of gas per day which it sells to the company at one dollar per thousand. This is about one-quarter of the total sales. The company now has twenty-five miles of mains, and its sales of gas are about fifty-two million cubic feet per year. The population of the city is about forty thousand, and the growth has been somewhat rapid. It was about twenty thousand in 1901, and about thirty thousand in 1910. The number of customers is in the neighborhood of three thousand. The population per mile of gas main is 1741, and per meter 16.34. Since the beginning of operations the company has at no time made a profit but has accumulated the large deficit referred to. It appears that for a few years prior to 1917 the company passed through its most promising period, as its net earnings for three or four years showed a gradual increase. In 1917, however, its gross income from operations was nothing, and in 1918 its operating deficit was \$8545 and its total deficit to that time \$476,143. The condition of the company and its service have been the subject of considerable complaint on the part of the population, and in 1918 the property was examined on behalf of the city by Alfred E. Forestall, a gas expert, who made an exhaustive written report covering both the financial history and condition of the property. This report was introduced in evidence, and by stipulation received with the same effect as though the witness had been placed on the stand and testified to the facts and opinions appearing in the report. The qualifications of the witness as an expert were not questioned. The facts and opinions thus presented seem to have been prepared and advanced with so much ability, fairness, and restraint that in the absence of contradictory testimony we have decided to accept them, and have relied upon them very largely in the disposition of the case.

Mr. Forestall finds that the existing gas plant is entirely inadequate, that the generating apparatus is obsolete and

uneconomical, that the existing street main system covers only part of the territory which offers a good field for and is entitled to receive gas service. He made a survey of the built-up portions of the city, and reports the necessity for an immediate extension of more than 50 per cent of the total length of existing mains; that the present manufacturing plant should be abandoned as soon as it can be done conveniently; that with a distribution system fully covering the territory and an aggressive business management the sales of gas could be increased to a minimum of 108,600 M cubic feet per year immediately, advancing to a 150,000 M cubic feet a year within a year or two; and that with such a plant gas could be sold at less than \$1.50, yielding an 8 per cent return on the investment. Mr. Forestall made an inventory and appraisal of the company's physical property in substantial agreement with that arrived at by the Commission and now carried on the books of the company as its fixed capital of the gas department; and he also shows that under ordinary circumstances a gas company properly covering the territory and aggressively handled should be able to secure sales of at least 3000 cubic feet per capita of the population in a city of the character of Niagara Falls. He shows that the population per mile of main and per meter in other communities in the State of comparable size with Niagara Falls are as follows:

City	Population		
	1915	Per mile of main	Per meter
Amsterdam.....	34,319	1,044	5.75
Binghamton.....	53,068	645	4.68
Central Hudson Gas and Electric Co., Newburgh and Poughkeepsie combined.....	60,590	877	4.50
Troy.....	78,349	867	4.00
Niagara Falls.....	42,257	1,741	16.34

No main has been laid in Niagara Falls since 1915, so the population per mile of main now is much greater than that in 1915. The population per meter is now about 17.

The company does not seriously question Mr. Forestall's

criticisms, and its counsel presented its case and reflected its proposed policy as follows:

Now what we intend to do — it is our only salvation to get back this money, this two or three hundred thousand dollars — our only salvation is to build a new plant and supply enough gas so that we can take care of this indebtedness and wipe it out. In order to do that we have got to have some kind of a showing on the question of earnings . . . If this company is going to be able to finance the new plant which it hopes to do during this year, it has got to be able I assume to show some kind of a return, something that approximates taking care of its operating expenses and a reasonable return on its investment.

At the hearings which were given by the Commission the company expressed its willingness, for the purposes of this case, to accept a valuation of \$275,000, and proposed that the rates should be fixed by adopting a base consisting of this sum plus \$25,000 to represent necessary cash capital used in the business.

While this would not be an unreasonable figure, the fact remains that the company reserved its right and indicated its intention of claiming at any time it may see fit in the future that its very large deficit should be taken into consideration in determining its rate base, upon the theory that such deficit represents going value; and the only reason why it was willing for the purposes of this case to accept the figure above indicated was stated to be that a rate base of \$300,000 would fully sustain its proposed rate of \$2.20 per M gross, or \$1.98 net.

Mr. Forestall shows that the proposed rate is quite high in comparison with other similar communities, and this comparison the Commission finds to be entirely just.

As we understand the company's financial policy, it is to use the proposed price of \$2.20 gross and \$1.98 net to enable it to make a financial showing upon which it can go into the market and embark fresh capital, with a view to enlarging its business so as properly to cover the city, with the expectation that by thus improving conditions it can demand a return upon not only its present physical value

but also upon its large deficit under the claim that it represents going value, and also upon such additional moneys as it may invest in order to reclaim its lost business.

But it is not clear to me how such a scheme can justly be worked out. The principles upon which going value are to be determined have been fully elucidated by the Court of Appeals in the leading case of *People ex rel. Kings County Lighting Co. v. Willcox*, 210 N. Y. 479. There would seem to be serious question whether any considerable allowance under this head can be made in the case in hand. The theory of an allowance for going value as laid down in the cases seems to be that such allowance shall in the main be based upon expenditures, if any, which the company may have made in building up its business during its earlier years. It is quite reasonable that meagerness of return during the initial years of an enterprise which has been well conceived and wisely and energetically managed and brought to a condition of success should also in fairness be made up by the public. Such failure of early return is a natural incident of the business. But in this case the evidence is limited to shortage of return which has continued for seventeen years, or during the entire life of the company, until in the aggregate it far exceeds the original investment, and there is no evidence of expenditures in building up the business except as they may be implied. The going value is thus not an incidental part of the valuation but composes by far the larger portion. This condition results in a requirement of a rate which the company realizes it is useless to ask for because it would be far in excess of what the traffic will bear. In the meantime important parts of the plant have become obsolete, and it appears that the legitimate field of the company's enterprise has never been followed up and occupied. It may prove that even from a practical standpoint, leaving out of consideration the legal question involved, it will be found impossible to recover the lost ground in the method indi-

ated. It would seem that the company may find it necessary to write off a large part of its deficit as the only means of arriving at a point where new capital can be interested with the end in view of vigorously pushing the business and covering the available field.

In the meantime I think a price should be determined upon, not so much with reference to rate of return on any given amount of capital as by a consideration of what the traffic will bear, or in other words what the public is willing to pay for the service rather than go without it altogether. This is not satisfactory as a determination of the questions presented and can be looked upon only as a temporary adjustment of the rate which will serve while the company may take some reasonable period of time to determine upon a permanent policy. We realize that this has not been possible during the pendency of this complaint, by reason of conditions growing out of the war but which are now being succeeded by a more nearly normal period.

The prices prevailing in other communities in the State of comparable size are in general very much lower than those proposed by the company. A price of \$1.90 per M cubic feet, with a discount of 15 cents per M for prompt payment, will be slightly in excess of the rate which has been superseded and will approximately cover costs of operation.

An order will be entered canceling the tariff schedule which is the subject of complaint, and permitting the filing of such a tariff as has been indicated.

All concur.

In the Matter of the Complaint of PATCHOGUE ELECTRIC LIGHT COMPANY *against* NORTH SHORE ELECTRIC LIGHT AND POWER COMPANY, alleging that the last named company is unlawfully constructing electric lines. [Case No. 6514.]

The authority of a lighting corporation organized under the Transportation Corporations Law to occupy public streets and highways is drawn from the State and not from the local authorities. The latter only consent to the exercise of the power given by the State because the Legislature has made the local consent a condition to the exercise of the privilege or franchise granted by it.

The Public Service Commission not only has the power but it is its duty to protect a lighting company against unlawful invasion of its territory by a competing company.

Decided June 17, 1919.

Appearances:

Joseph T. Losee, Patchogue, and *Ainsworth, Carlisle & Sullivan* (by John N. Carlisle and D. E. Ainsworth), Albany, as attorneys for complainant.

Martin S. Decker, Albany, and *Elmer B. Sanford*, 50 Church street, New York city, and *Willard N. Bayliss*, for respondent.

HILL, Chairman:

Petitioner prays that the Commission direct its counsel to proceed in the Supreme Court, pursuant to the provisions of section 74 of the Public Service Commissions Law, to compel the North Shore Electric Light and Power Company, respondent, to remove certain poles and wires which it has erected and is maintaining as a part of its electric lighting plant in that portion of the town of Brookhaven lying south of the main line of The Long Island Railroad Company, in which petitioner claims the right to operate; and that the North Shore Company be restrained from extending its lines in that district and supplying electricity to the public therein.

The town of Brookhaven comprises an irregular cross section of Long Island extending from Long Island Sound on the north to the Atlantic ocean on the south, and the territory in dispute lies within that town.

The Patchogue Electric Light Company, complainant, which I will hereinafter refer to as the Patchogue Company, was incorporated in March, 1888, under the Gas and Electricity Law for the purpose, as stated in its articles of incorporation, of furnishing electric light in the town of Brookhaven, Suffolk county; and in October, 1898, and January, 1909, it secured local consents from the municipal authorities of the town granting permission to erect poles and string wires on all highways in said town south of and including the middle country road, and has ever since, until the alleged invasion of the respondent, performed the business of electric lighting in that district, having a plant at Patchogue. The main line of the Long Island railroad runs through the town from east to west, leaving about one-third of the town on the south and two-thirds on the north. The middle country road runs generally east and west at some little distance north of the Long Island railroad.

The respondent, the North Shore Company, was incorporated March 10, 1909, under article 6 of the Transportation Corporations Law, for the purpose of manufacturing and distributing electricity, and in compliance with the requirements of the statute it describes the territory in which it intends to conduct its operations as the "territory included in the towns of Brookhaven and Smithtown".

The North Shore Company acquired on March 11, 1909, the requisite consent of the local town authorities to operate upon the streets and highways in said town of Brookhaven lying north of the main line of The Long Island Railroad Company, and operates and has operated therein.

We thus find that both companies have acquired from the State the requisite corporate powers or franchises to

operate, on condition, as prescribed by statute, of securing the consent of the local authorities, in all parts of the town of Brookhaven; and that the Patchogue Company has also acquired the requisite consent of the local authorities to occupy the streets and highways in that part of said town south of and including the middle country road, and is operating therein; and that the North Shore Company has secured such local consent for the portion of the town lying north of the main line of The Long Island Railroad Company, and has the right to operate therein.

No question is raised as to the validity of either of said consents, or of the rights of the respective companies to operate thereunder within the territories described therein.

The dispute in this case arises over complainant's contention that respondent company has not secured the requisite consent of the local authorities to permit it lawfully to conduct its business and erect its poles and wires in that part of the town of Brookhaven lying south of the main line of The Long Island Railroad Company, and in which the objectionable construction has taken place.

The respondent company answers this contention by claiming that it has acquired and now possesses the requisite consent of local authorities in that part of the town which is the seat of the dispute, in the form of a certain consent purporting to have been granted June 30, 1904, by the local authorities of the Town of Brookhaven, to a lighting corporation known as the Brookhaven Electric Light Company, which gave permission to that company to erect its poles and string its wires upon all the highways, avenues, and streets of the town of Brookhaven, for the purposes mentioned in its certificate of incorporation, upon certain terms and conditions. One of these conditions was that the company should pay to the supervisor of the town, from and after January 1, 1912, $1\frac{1}{2}$ per cent of the gross receipts of the company. Another condition was that before beginning work it should execute and deliver a bond to the town for the sum of \$1000, to indemnify the town against suits

for damages caused by the prosecution of its work. Another condition was that failure to commence work under the consent on or before two years from its date would render the same null and void; and the only remaining condition which we need refer to was that failure to comply with the terms of the resolution or consent should render the same void.

As the final determination of the dispute under consideration will probably turn upon the rights and privileges, if any, which the respondent company possesses by virtue of this consent, it will be necessary to trace its history from its inception.

The Brookhaven Electric Light Company never issued any capital stock, or operated either financially, or by the erection of a plant, or the manufacture or sale of light. It was incorporated in October, 1903, under the Transportation Corporations Law, for the purpose of doing electric lighting in the town of Brookhaven. It secured the consent referred to on January 30, 1904. On September 15, 1905, the local authorities passed a resolution "extending the franchise for a term of five years from the date of expiration, on same terms and conditions as before". The franchise, however, by its terms, was to remain in force for a period of fifty years, and it is probable that the intention was to extend the time, limited in the consent for the beginning of work within two years, to an additional period of five years.

At this time there was in existence another electric lighting corporation known as the Port Jefferson Electric Light Company. This company was incorporated under the Transportation Corporations Law for the purpose of doing electric lighting, and, as stated in its certificate of incorporation, the objects of its creation were manufacturing and using electricity for producing light, heat, and power for lighting streets, avenues, public parks and places, and public and private buildings at "Port Jefferson, Suffolk Co., N. Y."; and the certificate further stated that the names

of the town and county in which the operations were to be carried on were "Port Jefferson, Suffolk Co., N. Y." This company was incorporated in 1905. Port Jefferson then was and still is an unincorporated village lying in the town of Brookhaven. The certificate of incorporation was very inartificially drawn, but it would seem that inasmuch as the statute, chapter 566, laws 1896, specified cities, villages, and towns as the units of territory in which operations could be carried on, the natural construction of the language contained in the certificate, which would carry into effect the evident intention of the parties, would be that the operations of the company were to be carried on in the unincorporated village of Port Jefferson. The consent of the local authorities was likewise limited to "the streets of the village of Port Jefferson".

Respondent's counsel suggests that, by reason of the failure of the certificate to state the name of one or more incorporated villages, counties, or towns as those wherein the business was to be conducted, we should so interpret the language which was used as to make it mean either the entire county or the entire town. But where the intention is as clear as it is in this instance there would seem to be no room for interpretation. A fairer construction would seem to be to assume that it could take no more than it clearly intended to take, namely, the unincorporated village of Port Jefferson, the boundaries of which while not legally defined could be determined in fact. In 1909 this certificate of incorporation was altered and amended, pursuant to section 18 of the Stock Corporation Law, by extending the territory in which the business was to be conducted so as to include the entire town of Brookhaven. Respondent's counsel in their brief treat this certificate as having been filed, pursuant to section 7, General Corporation Law, which provides a method of correcting defects or omissions in the original certificate of incorporation, and claim that such a certificate operates *ex post facto* as of the date of

the original certificate. The objects of the two provisions are entirely distinct. A certificate under section 7 secures no new rights, and can add nothing to the corporate powers or privileges. Its purpose is merely to correct defects or omissions so as to preserve the corporate entity *ab initio*. A certificate under section 18 of the Stock Corporation Law serves an entirely different purpose and has the effect of enlarging and extending the corporate powers; but clearly such enlargement takes place only from the filing of the certificate. Therefore the filing of the amended certificate had no effect prior to 1909 when it was filed.

It thus appears that when on September 5, 1905, the Port Jefferson company took what it claims was an assignment from the Brookhaven Electric Light Company, of the consent which that company had received from the authorities of the Town of Brookhaven, its corporate power to conduct business and to occupy the public streets and highways was limited to the village of Port Jefferson. That power could not be extended by the village authorities or by means of any consent given by them. It could be extended only by a grant of power from the State by means of an alteration of the certificate of incorporation so as to enlarge the territory described therein. The power to operate and to occupy the public highways is drawn from the State and not from the local authorities. The latter only consent to the exercise of the power given by the State because the Legislature has made the local consent a condition of the exercise of the privilege or franchise granted by it. To illustrate, it would not be claimed that the Port Jefferson Company, incorporated to carry on its operations in the "village of Port Jefferson," could lawfully extend its operations to the streets of the city of New York by virtue of a consent of the local authorities which it might succeed in obtaining. If it should also lawfully acquire from the State the power and privileges of operating there, then the local consent would become operative, but not

otherwise. We are dealing not with natural or common law rights and equities, but with rights which are created wholly by statute, and which draw all of their vitality therefrom. Thus section 10 of the General Corporation Law provides that no corporation shall possess or exercise any corporate powers not given by law or not necessary to the exercise of the powers so given. It seems clear that the Port Jefferson Company was without corporate power to make use of the Brookhaven consent outside of the village of Port Jefferson, at least until in 1909 it amended its certificate of incorporation by enlarging its territory. If this conclusion is correct, it follows that the consent or franchise in question could not have been legally exercised outside of Port Jefferson until 1909, and no claim is made that it was ever exercised within the boundaries of Port Jefferson.

Before 1909 arrived, however, and on July 1, 1907, the Public Service Commissions Law became effective, which prohibited the exercise of any local consent of the character of that with which we are dealing not previously exercised without the approval of the Commission. The respondent admits that the so called Brookhaven consent has never been approved by the Commission, but claims that during the period in which it was held by the Port Jefferson company prior to July 1, 1907, it was exercised by that company, thus relieving it and its successors in interest from the requirement of the approval of the Commission. Much evidence was given bearing upon the question of fact thus raised. If I am correct in the view that at no time prior to July 1, 1907, could the Port Jefferson Company have made or enjoyed any lawful use of the consent by reason of the limitation of its corporate powers to the village of Port Jefferson, it is immaterial whether that company did or did not "exercise" it. But assuming that even an unlawful exercise in fact during the period claimed would have availed the respondent, I think that upon the evidence

presented we must find as matter of fact the consent was not exercised. The only testimony supporting the respondent's contention in this regard is that certain pole lines were constructed in the vicinity of Setauket Lake, Stony Brook, and Oldfield off the "Main road," that being the road upon which the company did possess a consent, the inference being that because no other than the Brookhaven consent would cover such construction it must have been done thereunder; but the undisputed evidence in the form of written documents leads irresistibly to the conclusion that the Port Jefferson Company never relied upon that consent as the basis for any construction whatever, and never intended to, and never did do any construction under it. It appears that it secured other consents from the town authorities which were entirely useless provided the Brookhaven consent was valid; that it has never given the bond required, and never made or tendered any payments required by its terms until after this litigation was begun. It appears also that long after 1907 it procured from the town authorities what purports to be a ratification "of all the acts of the Port Jefferson Electric Light Company in erecting and constructing its poles and stringing its wires in the northern section of the town of Brookhaven, and to make definite and certain what are its rights, privileges, and immunities". This resolution recites construction under the consent of April 15, 1895, covering "the streets of the village of Port Jefferson"; the consent of September 13, 1904, covering the main road between Port Jefferson and Smithtown, and the consent of April, 1909, between Port Jefferson and Mount Sinai and other points, ratifies the acts of the company as above recited, and in a final clause, further resolves that the said Port Jefferson Company may have permission to erect, construct, and maintain its poles, and spread its wires, for the purpose of furnishing electricity, to all the highways, roads, and streets in the northern part of the town of Brookhaven north of

the middle country road, but no recital or mention is made of the so called Brookhaven consent. And finally, in 1912, in a litigation between the Port Jefferson Company and the North Shore Electric Light and Power Company, wherein the rights of the Port Jefferson Company to construct in certain highways in the town of Brookhaven were at issue, the secretary and managing agent of that company, in defending such right to construct, justified entirely under consents other than the Brookhaven consent, and while alleging the possession of the so called Brookhaven consent, did not claim that any construction or operation had been done under it; and in the brief filed by the company's counsel on the hearing of the appeal in that litigation, reliance was placed exclusively upon the ratifying resolution and the consents recited therein, and not at all upon the Brookhaven consent. Surely if the company had exercised or claimed to have exercised the Brookhaven consent, which, if available, covered the entire town, it would have claimed so at that time.

Much attention has been given upon the trial and in the briefs to the question whether or not any legally effective transfer of the so called Brookhaven consent was ever accomplished as between the Brookhaven Company and the Port Jefferson Company or its successor, the North Shore Company. In my view of the case it is unnecessary to determine whether or not the informal assignment made by two directors in connection with the so called ratification agreement purporting to be executed under the seal of the company during the pendency of the present petition had the effect of vesting in the North Shore Company such rights as were originally conferred upon the Port Jefferson Company by the Brookhaven consent, or to what extent any such rights have survived.

The Commission not only has the power but it is its duty to protect the petitioner by proceeding against the respondent to require it to cease its unlawful operations

in petitioner's territory south of the main line of The Long Island Railroad Company. (*People ex rel. Oneonta L. & P. Co. v. Public Service Commission*, 180 A. D. 32; *Public Service Commission v. Rogers Co.*, 184 A. D. 705.)

An order will be entered accordingly.

All concur.

In the Matter of the Complaint of RESIDENTS OF WASHINGTON MILLS, CHADWICKS, WILLOWVALE, SAUQUOIT, CLAYVILLE, CASSVILLE, and WATERVILLE, Oneida county, against UNITED STATES RAILROAD ADMINISTRATION, DELAWARE, LACKAWANNA AND WESTERN RAILROAD, asking for better passenger train service between said points and the city of Utica, particularly a late train at night from Utica. [Case No. 6738.]

Decided June 24, 1919.

Appearances:

John Evans, Esq., for the complainants.

John G. Duffy, Esq., Secretary Utica Chamber of Commerce.

D. F. Conroy, Esq., Secretary Norwich Chamber of Commerce.

Messrs. Wm. B. Jones and Alfred W. Cockrell for Utica Daily Press.

Stanley Ricker, Esq., Chadwicks; *W. E. Nelson, Esq.*, Washington Mills; and *C. G. Alberding*, Clayville, citizens interested.

R. S. Eaton, Esq., Norwich, for Norwich Pharmaceutical Company.

C. V. Byrne, Esq., attorney for United States Railroad Administration and The Delaware, Lackawanna and Western Railroad Company.

Geo. A. Cullen, Esq., as Passenger Traffic Manager; and *Frank Cizek, Esq.*, as Superintendent of Railroad.

BARHITE, Commissioner:

This is an application by a large number of residents of the towns situated south of Utica on the Binghamton and Utica branch of the Delaware, Lackawanna and Western Railroad, asking for better passenger train service on that branch. The complainants are divided practically into two

classes: those who live at Waterville and stations intermediate between that point and Utica and who desire a train leaving Utica late in the evening for their homes; and those who desire a late evening train making connections at Binghamton with train No. 12 at 1:57 a. m., on the main line, for New York. The complaint finally narrows down to the question as to whether train No. 812, which had been operated on the road for many years but which had been discontinued on August 18, 1918, should be restored. This train had left Utica at 10 p. m., and made connections at Binghamton with the New York train. This train had been discontinued, as claimed by the Railroad Administration, on account of insufficient earnings and the very moderate degree of public convenience served by it.

The records of the number of passengers carried by the train while in operation, unfortunately, are meager and give the business transacted only for short periods of time: From and including June 27, 1917, to and including July 3, 1917, a period of seven days, 871 passengers were carried, giving a revenue, at present rates of three cents per mile, of \$754.23; from and including January 5, 1918, to and including January 14, 1918, a period of nine days, 1040 passengers were carried, with a revenue at present rates of \$661.87; from and including February 25, 1918, to and including March 3, 1918, a period of seven days, 1005 passengers were carried, giving a revenue of \$806.11; from and including August 6, 1918, to and including August 17, 1918, a period of twelve days, 949 passengers were carried, indicating a revenue of \$935.81. The records of Pullman car service extend over a longer period of time, and show that from January 1, 1917, to July 8, 1918, both inclusive, 5237 berths were occupied from all points to all destinations. The revenue is not reported. The company is unable to furnish the amount of revenue derived from express matter carried on this train.

No attempt was made to show the amount of revenue

derived from freight drawn over the branch. The company has, however, submitted a detailed statement of the various items which it is claimed must be considered in determining the cost of operating this train should it be put back on the road. In this estimate is included the cost of a return train from Binghamton to Utica. Among the items is 60 per cent of operating cost for maintenance of roadway and equipment, \$2620.42; rental value of locomotives and coaches, \$1097.00; another item is overtime of operators, \$624.00. The total cost of the trains as estimated for a thirty-day month is \$8084.79. The figures presented as to the cost of operation have been submitted to a thoroughly competent expert employed by the Commission. His observations, which follow, have the indorsement of the Commission:

"The item covering the overtime of operators is not clear. Day and night operators are now provided at the following points: Utica, Richfield Junction, Waterville, Sherburne, Haynes, Oxford, Greene, and Chenango Forks. This division is equipped with automatic signals throughout, and it would seem that the operators at the stations above indicated would be sufficient for night-time operation of this railroad. I therefore do not see the necessity of including this charge. The Union Depot charge is an arbitrary charge, and is undoubtedly correct.

"The item covering the cost of maintenance of roadway and equipment is based, as indicated in the evidence, on the ratio existing between the operating costs and the expenses of maintenance of roadway and equipment. The railroad has used 60 as the percentage of the operating costs, which the expenses for maintenance of way and equipment are. I have checked up the figures of this railroad for the year ended December 31, 1918, and find that the percentage is 70.02 for the whole railroad. I assume that the company either used figures for an earlier year or else made an allowance for a difference in the standards of maintenance employed on the main line and branches.

Nevertheless, I believe that to adopt this method of computing the cost of these two maintenance items is erroneous, for the reason that it is decidedly improbable that the running of these two extra trains would involve this increase in the item. While this may be a proper percentage, it does not necessarily follow that there will be any additional expenditure on account of the operation of the trains. There will be a slight additional amount for the maintenance of the equipment, but I do not believe that relatively it will be as much as is shown. This is an intangible matter, and I do not know any accurate way in which a conclusion may be reached, but I am firmly convinced that it is wrong to adopt such an item.

"Similarly in the case of the rental values assigned. It may be true that these are the rental values assigned by the Federal Administration, but such values include a return on the money invested in the equipment, depreciation, repairs, and undoubtedly an element of profit. Certainly these should not all be included, for the reason that they have been included in some of the other items. The item of profit should certainly not be considered. I believe that it is not proper to include any of these values. This equipment will be engaged in the business of the railroad, which ostensibly is being operated to serve the public and also to make a certain profit for the holders of the securities of the corporation. If this is so, then all of the elements which go into the cost of establishing the business and increasing the facilities should be considered as capital expenditures, the return on which should come from the difference between the income and the expenses.

"I do not see how the rental value can be considered as an expense; and therefore, if it is not an expense, it is not properly chargeable as part of the cost of operating the train. If it is proper to include such rentals, why is not something included for the rental value of the rails, right of way,

station buildings, etc.? It seems to me to be just as logical to include these as to include the equipment.

"Therefore, in arriving at the probable cost of operating this train, I think it fair to include only the out of pocket expense, which is \$4367.37, less the overtime of the operators, \$624: or \$3743.37, or about 66 cents per mile. It must be borne in mind that nothing is included to represent the necessary repairs to equipment and track which will have to be made. I do not think it unreasonable to assign to this about 25 cents per mile, making the total cost approximately \$1. If such a figure is used, it will be seen that the cost of operation will be about \$190 per day. This will probably result in a slight loss, but nothing like the amount which is indicated by the figures presented by the railroad."

It must not be forgotten that the fact that this train may be run at a loss is not necessarily a reason why it should not be again placed upon the road. The principle is old and well established, that a determination whether a public utility company shall furnish a certain service does not rest upon the question whether that particular service will yield a profit to the company, but upon the necessities and convenience of the public, and upon the effect which the act of furnishing the particular service will have upon the total earnings of the company. The principle is very clearly laid down in the *St. Louis & San Francisco Ry. Co. v. Gill*, 156 U. S. 649, at page 665. In that case the court had under consideration the effect of a statute which prescribed a maximum rate of fare. The company had been sued for a penalty provided for a violation of the statute. The company defended upon the ground that the portion of the road over which the plaintiff had been carried was highly expensive to construct and maintain, and that the cost of maintenance and transporting passengers over it exceeded the minimum rate fixed by law. The Supreme Court held that the correct test was as to

the effect of the law on "the defendant's entire line, and not upon that part which was formerly a part of one of the consolidated roads; that the company can not claim the right to earn a net profit from every mile, section, or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative . . . and finally, that to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses".

It is clearly the opinion of the Commission that the train known as No. 812 previous to the time of the war should be restored to service, and should leave Utica at as late an hour as may permit it to connect with train No. 12 on the main line bound for New York.

Commissioners Irvine and Fennell concur.

Commissioners Hill and Kellogg concur on the ground that this train having been operated for a long period of time prior to its recent removal by order of the United States Railroad Administration, the burden of proof was upon the respondents to justify its discontinuance, and that they failed to sustain such burden.

Petition or Complaint of EMPIRE STATE RAILROAD CORPORATION under subdivision 1, section 49, Public Service Commissions Law, for consent to increase certain passenger fares in and between Syracuse and Oswego and intervening points. [Case No. 6787.]

After an examination of the value, the operating revenues and operating expenses of the applicant's interurban line between Syracuse and Oswego, tariffs were authorized upon a basis of 2.77 cents a mile, adjusted to rates of 5 cents and multiples of 5 cents.

Decided July 1, 1919.

Appearances:

Nottingham, Nottingham & Edgcomb (by William Nottingham), 530 Onondaga County Savings Bank Building, Syracuse, as attorney for applicant.

IRVINE, Commissioner:

The rates of the Empire State Railroad Corporation have been, in several cases, for a long time under consideration by the Commission. The corporation is the result of a reorganization attendant upon the dissolution of the former Empire United Railways, Inc. [See orders of this Commission in Cases Nos. 6209 and 6210, made respectively October 24, 1917, and October 30, 1917.] The corporation owns and operates what was originally the Auburn and Northern Railroad between the city of Auburn and the village of Port Byron, local systems in the cities of Oswego and Fulton, and an interurban line between Oswego and the city of Syracuse. This case concerns only rates on the last mentioned line. A tariff making certain increases in rates was filed to become effective January 6, 1918. Complaint was made against these increases by the mayor and common council of the City of Oswego. While that case was pending a new tariff was filed, to become effective

August 1, 1918. The operation of that tariff was suspended, but the suspension order was revoked when it became evident that the city intended to make no further active resistance, and when the Commission was informed that wage schedules were under consideration by the War Labor Board, the arbitration by which might seriously affect the condition of the corporation. Aside from the inherent reasonableness of the general schedule, these rates presented objectionable features because of local discriminations largely brought about by differences between ticket rates and cash fares paid on the cars without rebate. The uncertainties as to labor costs and certain other features prevented an immediate decision, and February 20, 1919, the corporation filed a petition for permission to install a still further tariff superseding those already in question.

That is the present case, and the only matter that need be considered is in connection with the interurban fares on the Oswego-Syracuse division. This tariff is based on a rate of 2.77 cents a mile, but is adjusted to rates of five cents and multiples of five. It makes no increases for the carriage of passengers within the city of Fulton, the city of Oswego, the city of Syracuse, to points between Syracuse and Baldwinsville excluding Baldwinsville, or to points between Minetto and Oswego, although the one-way rate from Minetto to Oswego is increased one cent. The new tariff increases commutation rates from $1\frac{1}{4}$ to $1\frac{1}{2}$ cents per mile. This is substantially the rate on other roads in that part of the State. A coupon family book is withdrawn from sale. There are also special tickets used, chiefly by workmen, good for twelve round trips between Syracuse and Halcomb, and between Oswego and Minetto. These rates are not disturbed. It is proposed also to charge passengers boarding trains at points where there are ticket offices, at times when the offices are open, an additional ten cents where the regular fare is over fifteen cents, but to give a rebate check for the full amount of the excess

fare. At the hearing on this application held in Syracuse May 9th, there was no opposition presented to the present application of the company. The proposed tariff removes the discriminations which appeared in the previous tariffs, and no ground can be found to question the propriety of its general structure. The sole question is as to the reasonableness of the rate base proposed.

The Commission, through the reorganization proceedings, is quite familiar with the property of the company and its value taken as a whole. Its apportionment among the different lines presents difficulties. The actual cost of the property as ascertained by the Commission in previous proceedings, with adjustments due to additions and retirements since the reorganization, is shown in the evidence as \$4,972,850.95. This includes actual expenditures for interest during construction, engineering, etc., but it does not include such items as promoters' services, cost of procuring franchises, and development costs, usually mis termed "going value". In the reorganization proceedings there was an issue of \$1,000,000 allowed in addition to the net tangible assets of the company, but with the stipulation that such allowance should not be construed as a determination that it should be deemed a permanent intangible fixed capital asset. Undoubtedly some proportion of this should be considered, but as it is impossible on evidence before us to determine how much, it is entirely excluded from calculations. In placing a value on the interurban line there should be deducted the cost of the Auburn and Northern quite definitely ascertained in previous proceedings at \$404,389.61, and the estimated cost of the Oswego and Fulton city divisions made on behalf of the company by Mr. W. E. Putnam in 1918, the propriety of which the Commission finds no reason to question. In the value of the Oswego and Fulton cities property there is included a portion of the value of the lines in the two cities used by the interurban cars apportioned according to the percentage of use between the

city cars and the interurban cars. The cost of the Oswego and Fulton city divisions as so ascertained is \$487,488. This leaves as the cost of the interurban line \$4,080,973.34. We will adopt this figure as the rate base, repeating, however, that if the proper amount could be ascertained there should properly be added something for actual intangibles of the character above referred to.

In constructing an estimated income account under the proposed rates, revenues have been assumed without any allowance for decreased travel due to increased rates. It is probable that there will be less decrease than usually occurs in such cases, because while there are two steam railroads operating between Syracuse and Oswego and there is theoretical competition between most intermediate points, the passenger service has been so greatly curtailed on both roads and the service of the applicant is so frequent that the steam competition, while not negligible entirely, is so small that unless the steam service is greatly improved it will not seriously affect the revenues of the applicant.

The applicant charges as depreciation 2 per cent of the actual field costs of way and structures, and 3 per cent on equipment. Neither of these items is excessive.

The estimate for taxes for 1919 is \$40,559. The taxes for 1918 were \$28,581. This large increase is not satisfactorily accounted for, and in constructing the income account the taxes are estimated on the 1918 basis. Operating expenses have been largely increased, in part by the cost of materials, but chiefly by the increases in wages according to the award of the War Labor Board. For example, platform men were allowed 45 cents per hour and a ten-hour day, irrespective of the amount of platform time, and there was testimony to the effect that on this basis, with overtime, the average platform expense is nearly 50 cents an hour for each man. The Commission has received information to the effect that very recently the wage scale for platform men has been increased to 47 cents an hour, to equalize the pay

with that received on neighboring interurban lines. This will make a further increase in operating expenses, but we base our estimate on the evidence offered at the hearing. Two small items from the company's exhibits are questionable but they are so small that they would not affect the result. Subject to these explanations, we reach the following estimate as an income account for the year 1919.

Estimated operating revenues, assuming present tariff to be in force throughout year, as shown in company's exhibit No. 2....	\$662,307
Estimated increase under proposed tariff as shown in company's exhibit No. 3.....	42,526
Total estimated operating revenues.....	<u>\$704,833</u>
Estimated proper depreciation allowance as shown in company's exhibit No. 5.....	\$69,393
Estimated other operating expenses and rent deductions (developed by taking figures for operating expenses as shown in company's exhibit No. 2 and subtracting therefrom the amounts included therein for depreciation as stated in company's exhibit No. 5.....)	397,993
Tax bills received during 1918.....	28,581
Total estimated revenue deductions.....	<u>\$495,967</u>
Estimated operating income.....	\$208,866
Estimated other non-operating income.....	8,046
Estimated amount of return on investment.....	<u>\$211,912</u>

On the almost bare bones value then of \$4,080,973, this gives a rate of return of 5.19 per cent. If depreciation is deducted, a return of 5.63 per cent; and on property costs as above, plus working capital less depreciation, 5.28 per cent. None of these rates is excessive, and none will prove sufficient to be especially attractive to new capital as it may be needed. A careful inquiry has been made into the increases in operating costs in comparison with increases shown by other companies. The average increase of 1918 over 1917 of six comparable companies is 19.67 per cent, while that of this company was 6.38 per cent, although on the figures already given we have estimated an increase for 1919 over 1918 of 16.84 per cent.

While comparisons are not of much value where operating conditions are different, it is of some interest to note the prevailing rates of fare per mile on other interurban roads operated into Syracuse. They are as follows: New

York State Railways, Oneida line, 2.9 cents; Rochester and Syracuse Railroad Company, 3 cents; Syracuse and Suburban, cash 3 cents, ticket 2.55 cents; Auburn and Syracuse Electric Railroad, cash 2.84 cents, ticket 2.66 cents. In the case of the Auburn and Syracuse outside of the Auburn city district, that is, between Soule Cemetery and Syracuse city line, the cash fare is 3 cents per mile, and the ticket fare 2.77 cents.

All concur.

In the Matter of the Petition of NEW YORK AND STAMFORD RAILWAY COMPANY under section 53, Public Service Commissions Law, for approval of the exercise of rights under amendments to certain franchises of said company from municipalities; also as to filing passenger tariff on short notice. [Case No. 6886.]

Decided July 1, 1919.

Appearances:

Eugene F. McKinley, White Plains, for the petitioner.

William E. Lyon, 286 East Boston Road, Mamaroneck, for property owners in the village of Mamaroneck.

Charles M. Baxter, jr., Mamaroneck, for the Village of Mamaroneck.

FENNELL, Commissioner.

The New York and Stamford Railway Company operates a street surface railroad extending from Mechanic street in the city of New Rochelle, in a general easterly direction through the village of Larchmont, town of Mamaroneck, village of Mamaroneck, town of Harrison, town of Rye, village of Rye, and village of Port Chester, in Westchester county, and State of New York, and thence east in the State of Connecticut to the city of Stamford, Connecticut. Its track-age totals approximately 26.37 miles, of which approximately 16 miles are in the State of New York.

The company proposes a new fare zoning plan whereby it expects to increase its operating revenue. It at present operates on a fare zoning plan, there being three zones within this State, the second zone and the third zone overlapping a short distance. The zoning plan proposed divides the New York state portion of the road into four zones, zones two and three overlapping; and an additional sub-zone is provided covering a portion of the territory in its pro-

posed third zone and a portion of the territory in its proposed fourth zone.

The following is a description of the proposed new zones:

Zone 1: Western terminal, Mechanic street, in the city of New Rochelle, N. Y.; eastern terminal, Dean place, in the village of Larchmont, N. Y. Between and including terminal points and all points intermediate, fare 5 cents, which includes transfers to and from The Westchester Electric Railroad Company's lines in New Rochelle.

Zone 2: Western terminal, the west line of the village of Larchmont, N. Y., which point is a short distance west of Dean place; eastern terminal, the point where this corporation's railroad crosses the line dividing the townships of Harrison and Rye, which point is approximately 1000 feet east of Summer street in the village of Rye. Between and including terminal points and all points intermediate, fare 5 cents, which includes transfers to and from Larchmont depot line, also to and from certain points in the town of Mamaroneck reached by The Westchester Street Railroad Company's lines.

Zone 3: Western terminal, the point where this corporation's railroad crosses the line dividing the villages of Mamaroneck and Rye; eastern terminal, the point where this corporation's railroad crosses the line dividing the villages of Rye and Port Chester. Between and including terminal points and all points intermediate, fare 5 cents, which includes transfers to and from Rye Beach and other points in the village of Rye reached by this corporation's lines.

Zone 4: Western terminal, the point described as eastern terminal of Zone 3; eastern terminal, as to New York state traffic, the point where this corporation's railroad crosses the line dividing the States of New York and Connecticut. Between and including terminal points and all points intermediate, fare 5 cents, which includes transfers to and from local lines in the village of Port Chester.

Sub-zone A: Western terminal, Central avenue and Rye Beach, in the village of Rye, N. Y.; eastern terminal, Mill street, in the village of Port Chester, N. Y. Between and including terminal points and all points intermediate, fare 5 cents. Passenger riding from points in the village of Rye, N. Y., east of and including Central avenue and Rye Beach, and paying a 5 cent fare, will upon request therefor and the payment of 3 cents be given transfer to any point in the village of Port Chester reached by the North and South Regent street, Westchester avenue, and North Main street lines of this corporation. Passenger riding from points in the village of Port Chester, N.Y., reached by the North and South Regent street, Westchester avenue, and North Main street lines of this corporation, and paying a 5 cent fare, will upon request therefor and the payment of 3 cents be given a transfer good to points in the village of Rye east of and including Central avenue and Rye Beach.

For the purpose of showing the changes in fares that the proposed zoning would make from the fares under present zoning between various sections of this railroad, the following table has been prepared:

DESCRIPTION OF TERRITORY

- A — Mechanic street, New Rochelle, to east city line, New Rochelle.
- B — East city line, New Rochelle, to Dean place, village of Larchmont.
- C — Dean place, village of Larchmont, to line dividing village of Mamaroneck and village of Rye.
- D — Line dividing villages of Mamaroneck and Rye to Summer street in the village of Rye.
- E — Summer street in the village of Rye to line dividing townships of Harrison and Rye.
- F — Line dividing townships of Harrison and Rye to Central avenue and Rye Beach, village of Rye.
- G — Central avenue and Rye Beach, in the village of Rye, and line dividing villages of Rye and Port Chester.
- H — Dividing line villages of Rye and Port Chester to points on local lines in Port Chester, namely North and South Regent street, Westchester avenue, and North Main street.
- J — All local lines in the village of Port Chester other than those named in territory H.
- K — Mill street, Port Chester.
- L — New York-Connecticut state line.

Between And		A	B	C	D	E	F	G	H	J	K	L
Present	A	5	10	10	10	10	15	15	15	15	15	15
Proposed		5	5	10	10	10	15	15	20	20	20	20
Present	B		5	5	5	5	10	10	10	10	10	10
Proposed			5	5	5	5	10	10	15	15	15	15
Present	C			5	5	5	10	10	10	10	10	10
Proposed				5	5	5	10	10	15	15	15	15
Present	D				5	5	10	10	10	10	10	10
Proposed					5	5	10	10	10	10	10	10
Present	E					5	5	5	5	5	5	5
Proposed						5	5	5	10	10	10	10
Present	F						5	5	5	5	5	5
Proposed							5	5	10	10	10	10
Present	G							5	5	5	5	5
Proposed								5	8	5	5	5
Present	H								5	5	5	5
Proposed									5	5	5	5
Present	J									5	5	5
Proposed										5	5	5
Present	K										5	5
Proposed											5	5
Present	L											5
Proposed												5

The new zoning plan retains all the transfer privileges obtaining under the present zoning plan except as is provided in sub-zone A. It is also proposed to sell books of 17 tickets for \$1, good between any point on this corporation's lines in the town of Harrison and Mill street, Port Chester, but no transfers in the village of Port Chester will be issued to passengers holding such tickets. This is a new regulation, and it is proposed to establish it in order to take care of certain mill operatives who under the present zoning plan can ride from Summer street in the town of Harrison to Mill street in the village of Port Chester for 5 cents. The new zoning plan in a few instances will operate to decrease the fare for short-haul travel from 10 cents to 5 cents; and in most instances it will increase the fare where a passenger is now carried through three zones but under the new plan will be carried through four zones, from 15 cents to 20 cents; and where now carried through

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two zones and under the new plan will be carried through three zones, from 10 cents to 15 cents; and where the passenger is now carried in one zone and under the new plan will be carried through two zones, from 5 cents to 10 cents.

The necessity for increased revenue is shown by the following income statements. The statements for 1917 and 1918 are made up from the company's reports on file in this office, and the one for January, February, and March, 1919, was filed by the auditor of the company.

	1917	1918
Operating revenues.....	\$394,259.56	\$374,392.43
Operating expenses.....	283,187.26	286,189.32
Net operating revenue.....	\$111,072.30	\$88,203.11
Taxes accrued on electric railroad.....	28,318.85	23,112.45
Income from electric railroad operations.....	\$82,753.45	\$65,090.66
Non-operating income, interest revenues.....	665.24	646.42
Gross income.....	\$83,418.69	\$65,737.08
Deductions from gross income:		
Interest accrued on funded debt.....	\$58,300.00	\$58,300.02
Other interest deductions.....	12,292.32	12,427.92
Rent from lease of other road and equipment.....	23,288.69	23,288.69
Track and terminal privileges.....	45,951.03	47,194.33
Hire of equipment.....	684.12	613.36
Miscellaneous debits.....		102.20
Amortisation of debt discount and expense.....	1,920.03	1,905.00
Total deductions from gross income.....	\$142,436.19	\$143,831.52
Net corporate income (loss).....	\$59,017.50	\$78,094.44
Corporate deficit at beginning of year.....	104,801.17	155,572.43
Other additions to surplus.....	8,246.24	
Other deductions from surplus.....		2,924.97
Corporate deficit at end of year.....	\$155,572.43	\$236,591.84

	January	February	March	Total
Operating revenues.....	\$25,569.22	\$24,104.85	\$27,512.39	\$77,186.46
Operating expenses.....	28,729.65	28,409.96	29,226.42	86,366.03
Net operating revenue (loss).....	\$3,160.43	\$4,305.11	\$1,714.03	\$9,179.57
Taxes.....	1,373.44	1,817.63	1,894.84	5,085.91
Operating income (loss).....	\$4,533.87	\$6,122.74	\$3,608.87	\$14,265.48
Non-operating income.....	22.84	33.43	24.32	80.59
Total income.....	\$4,511.03	\$6,099.31	\$3,584.55	\$14,184.89
Deductions from income.....	8,049.98	8,049.96	8,049.96	24,149.90
Net income (loss).....	\$12,561.01	\$14,139.27	\$11,634.51	\$38,334.79

Mr. Miller, president of the company, testified that for the year ended December 31, 1918, the total cost per passenger was 6.11 cents, while the total receipts per passenger were 5.05 cents: making a net loss of 1.05 cents per pas-

senger. He further testified that for the three months ended March 31, 1919, the net loss per passenger had increased to 2.4 cents per passenger.

The company has bonds outstanding \$1,351,000; capital stock \$500,000; demand notes \$218,432. The fixed capital account as of December 31, 1918, shows a total of \$1,925,609.33.

On the above showing it is unnecessary at this time to make a valuation of the company's property, as the proposed change of zones and rates is made in an attempt to meet costs rather than to make a return on investment.

The Town of Rye, Town of Harrison, Village of Rye, and Village of Port Chester have granted amendments to franchises held or used by applicant. These amendments are limited to two years.

The exercise of the rights granted under the franchise amendments, the proposed zoning system, and the increases and decreases in rates thereunder should be approved. The company should be authorized to put into effect, on five days' notice, a tariff stating the new zones and fares.

An order has been made accordingly.

All concur.

In the Matter of the Complaint of RESIDENTS OF THE INCORPORATED VILLAGE OF RENSSELAER FALLS AND VICINITY, St. Lawrence county, *against* UNITED STATES RAILROAD ADMINISTRATION, NEW YORK CENTRAL RAILROAD, asking that the station be kept open longer hours. [Case No. 6833.]

Increased cost of operating a station, due to an increase of wages of the agent above an amount which such services are reasonably worth, furnishes no sufficient reason for shortening the hours of attendance at the station of such agent, thereby depriving the patrons of the services of an agent at the time of arrival of certain trains, where previously to such increase of wages such services were rendered for a long period of time.

Decided July 3, 1919.

Appearances:

George H. Bowers, Canton, as attorney for complainants.

Thomas Spratt, Ogdensburg, and *James F. Akin*, Ogdensburg, as attorneys for respondent.

KELLOGG, Commissioner:

In this proceeding the residents of Rensselaer Falls, an incorporated village in the town of Canton, St. Lawrence county, have complained of the curtailment, by the United States Railroad Administration operating the New York Central railroad, of the agency service at the railroad station at that place.

Under the present conditions the agent who also has entire charge of the express and telegraph business at that place leaves his office for the day at 3:45 p. m.

This station is situated on a branch of the New York Central railroad which connects Ogdensburg with DeKalb Junction. This branch is about nineteen miles long, and the station in question is situated between Heuvelton, from which it is distant about five miles, and DeKalb Junction, from which it is distant nearly seven miles.

The village has a population of only about four hundred inhabitants, but is the center of a surrounding agricultural country of some importance.

It is alleged in the complaint, and stands without denial in the proceeding, that for 58 years prior to March 28, 1919, an agent was present at this station, and had served the patrons of the road at the arrival and departure of all trains, both passenger and freight.

Prior to December, 1917, he reported at the office at 7 o'clock in the morning, remaining on duty until the departure of the last train at night, which passed this station at shortly before 8 o'clock.

He had a helper during at least part of this time, who assisted him in attending to the wants of the patrons of the office, and assisted consignees in obtaining their goods at times when the agent was busy with the sale of tickets on the eve of train departures.

On December 8, 1918, a second operator was put on duty so that the former agent attended to the duties of the station from 6 o'clock in the morning until 2 p. m., and the new operator superseded him at 2 p. m. and remained on duty until 10 p. m.

This enlargement of the open hours of the station was due to the fact that at the time a through freight train was detoured over this branch in order to relieve congestion on another route, and it was important to have this office manned during these extended hours to protect it from collision. This plan, however, was abandoned, and by an order of March 29, 1919, the extra telegrapher was withdrawn, and the former agent resumed his duties, but instead of discharging such duties during all the former hours of service, he is now on duty only from 7:45 in the morning until 3:45 in the afternoon, out of which time he takes his noonday meal when convenient.

There has been no practical change in the volume of patronage of this office for many years. The freight reve-

nues are about \$24,000 per year on an average, and the passenger ticket receipts about \$4600. Between five hundred and six hundred telegrams are received and forwarded per annum.

There is therefore no reason on account of changed conditions in the patronage of the office or in its receipts for reducing either the passenger or freight service which has existed for more than half a century.

On week days four passenger trains pass and stop at the station each way. A way freight passes each week day in one direction, one day going to the east, and the other day returning toward the west. After 3:45 p. m., the hour at which the agent leaves the office, a passenger train passes each way, and after that time on alternate days the way freight runs from DeKalb Junction to Ogdensburg, and if it is as much as an hour late, which it usually is, passes without service or attention from the ticket agent.

On account of the absence of the agent, no express to this station is transmitted on these afternoon trains, and no telegrams can be received or sent in the village after the hour of his departure from the office. Passengers boarding these afternoon trains must pay their fare on the trains, and have to attend to checking their baggage after they embark.

A caretaker, the wife of the ticket agent, is employed at a compensation of \$15 a month to keep the station open and lighted for the accommodation of passengers intending to board these trains.

In view of the fact that for so long a period of time under private operation the services of the agent at this station were available at and preceding the times of the stopping of all trains thereat, and in view of the further fact that there has been no diminution in volume of business, the curtailment of service, as above indicated, is unwarranted, and the fractional service rendered is inadequate.

This marked curtailment of service, being an abandon-

ment of a material portion thereof, was affected without any permission applied for or granted by this Commission.

The only excuse offered by the Railroad Administration for its action is that the wages of the agent have increased so as to render it much more expensive to maintain the service for the hours during which it had always previously been maintained. This increase in wages, however, was entirely voluntary on the part of the Railroad Administration.

When the present ticket agent commenced his employment 17 years ago, he worked during the hours already indicated from 7 o'clock in the morning until the passing of the last train at night, for the sum of \$30 per month. This was gradually increased until at the time the Government took possession of the railroad in 1917 his salary was \$67.50 a month. On October 1, 1918, his salary was increased 25 per cent, and in December of that year it was raised to 48 cents an hour for 8 hours, with an increase of 50 per cent for each hour overtime, which amounts, without any overtime, to \$105 a month.

Prior to this very large increase he was entirely satisfied with his position. He received and still receives from \$30 to \$35 a month as commissions from the express company in addition to his salary as railroad agent, and a small amount for service as telegrapher. This raise in salary was unrequested by the agent, and he was entirely satisfied with his previous remuneration.

He lives directly across the road from the station. The duties of the office are not onerous. It is not probable that if his work were concentrated in one continuous period of service it would exceed more than two or three hours a day.

The increase was occasioned by the application of the rule establishing an eight hour service and providing a minimum wage. This rule, most admirable in many and perhaps in most localities, has no reasonable application to

a situation such as this, where the work although extended in time is so inconsiderable in volume.

If the Railroad Administration sees fit to pay an exorbitant and extravagant price to the agent, it certainly can not upon such voluntary action predicate the curtailment of service to the prejudice of the patrons of the office, especially where that service has been rendered for two generations and there is no diminution of patronage.

No complaint has been made of the limited service given on Sunday, and therefore no direction should be ordered in that regard, but as to week days, an order should be entered directing the maintenance of this office with an agent in charge from 7 o'clock in the morning to the passing of the train at 7:55 at night, with such time out as is necessary for the agent to have his meals, as will not interfere with his presence at the station for the purpose of selling tickets to patrons for at least 15 minutes before the arrival of each train.

Although a helper was maintained at this office for many years, other more busy stations are served without a helper, and the circumstances do not require a restoration of such assistance. The inconvenience accruing to patrons of the office in waiting for their freight a few moments, at times when the agent is engaged in selling tickets to patrons on the approaching arrival of trains, is not sufficient to authorize the direction of restoration of the helper to duty by order of this Commission.

All concur.

Application or Complaint of WAYLAND-STEUBEN POWER COMPANY, INC., for leave to increase a certain wholesale rate for electricity. [Case No. 6843.]

Decided July 8, 1919.

Appearances:

Elton H. Beals, Esq., attorney for Wayland-Steuben Power Company, Inc., petitioner; *G. R. Mills, Esq.*, as President, and *Charles W. Mills, Esq.*, as Secretary and General Manager for the Wayne Power Company, and *John Kimmel, Esq.*, in person.

BARHITE, Commissioner:

This is an application by the Wayland-Steuben Power Company, Inc., for approval by this Commission of certain rate schedules for electricity filed by said company pursuant to law. Such approval is not necessary, but the petitioning company asserts that a customer objects to the rates prescribed in the schedule, upon the ground that they contravene a contract in existence between the petitioning company and the customer made in 1912, and therefore the approval of the Commission to the schedule is desired.

The objecting customer, the Wayne Power Company, appeared at the hearing, and asked that the schedule be set aside upon the ground that the rates were governed by the contract noted, and also upon the further ground that the Wayne Power Company is a partner with the petitioning company, and that any schedule of rates to be effective must be jointly filed by the two partners.

The question as to whether the schedule rates are just or reasonable within those provisions of law which fix the amount that may be lawfully charged is not before the Commission for determination.

The complaint must be dismissed, because the question whether the contract to which reference is made determines the rates to be charged for electricity can only be answered in the negative. (*Union Dry Goods Company vs. Georgia Public Service Corporation*, 248 U. S., 372.)

Neither does the claim that a schedule of rates to be effective must be filed by both parties to the contract because they are partners need consideration in this proceeding. The two parties who have rights under the contract are corporations, and corporations can not become partners. (See *People vs. North River Sugar Refining Company*, 121 N. Y. 582.)

If any interested party considers that the rates filed by the petitioning company are for any reason unlawful, then a proceeding may be brought to test that question.

All concur.

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of the TRUSTEES OF THE VILLAGE OF SAG HARBOR, Long Island, *against* LONG ISLAND GAS CORPORATION as to proposed rates for gas. [Case No. 6664.]

Decided July 8, 1919.

Appearances:

Cortland Kiernan, Esq., for the complainants.

Hon. Martin S. Decker and Elmer B. Sanford, Esq., for the defendant.

BARHITE, Commissioner:

The complaint in this case is made by the president and trustees of the Village of Sag Harbor against the Long Island Gas Corporation upon the ground that the company has filed and is operating under a schedule fixing rates for gas which are in excess of, and it is claimed, contrary to the provisions of a franchise granted to the company by the village. The provision of the franchise upon which the village rests its case provides "And upon further condition that the price charged by said company for gas sold to any person or corporation shall not exceed \$2.25 per thousand cubic feet for illuminating gas, and not to exceed \$1.75 per thousand cubic feet for fuel gas, unless at any time it can be proved that the gas can not be manufactured at a profit at the above rates". The proposed rate provides for a \$1 per month minimum charge, and for the use of anything less than four thousand cubic feet the price is \$2 per thousand, and for the named amount or over the price is \$1.80 per thousand.

The company operates in the villages of Sag Harbor and Southampton, and the intermediate territory which includes the unincorporated villages of Bridgehampton and

Water Mill, in the town of Southampton. The village of Southampton has relieved the company from the restriction clause in its franchise, and has consented that the company may charge at the rate of \$2 per thousand cubic feet for gas and a minimum charge of \$1 per meter per month for a period of one year after the signing of the Treaty of Peace by the United States and the Allies and Germany. The Town of Southampton has made a similar concession.

The complainants make two points against the filed schedule rate: first, that the increase in the rate for fuel gas from \$1.75 to \$2 per thousand cubic feet is properly with this Commission for its approval or disapproval; second, that the minimum charge is unwarranted under the franchise, is unlawful, is discriminative and unjust, and should not be allowed.

Quite recently the Court of Appeals of the State of New York and the Supreme Court of the United States have rendered decisions which declare that the test of the legality of a rate named in a franchise made by a municipality for the benefit of its inhabitants, or in a contract between the company and a consumer, is not the amount named in the franchise or the private contract, but that the State, in the exercise of its police power, has the right to fix rates which supersede the agreed amount.

In *People ex rel. Village of South Glens Falls v. Public Service Commission, Second District*, 225 N. Y. 215, it is held that the regulations regarding rates which municipalities may impose in granting licenses or permission to use their streets by public service corporations can not be said to form contracts beyond the inherent police power of the Legislature to modify for the public welfare. The same case holds that the power to regulate charges has been conferred upon this Public Service Commission by the Legislature.

In *Union Dry Goods Company v. Georgia Public Service*

Corporation, 248 U. S. 372, the court lays down the doctrine that when a State fixes reasonable rates to be charged by a corporation for supplying electricity to the inhabitants of a city, which supersede lower rates agreed on in an existing time contract made previously between the company and a consumer, such action is a legitimate effect of a valid exercise of the police power, not impairing the obligation of the contract or depriving the consumer of property without due process.

In the case at bar the question of the effect of a contract made by a company to furnish the municipality itself with light is not under consideration.

The gas company gives evidence of its financial condition, the truthfulness of which is not disputed by complainants, nor did they offer evidence in contradiction.

In a brief submitted by the complainants they say that the statement filed by the company, while disclosing much that is open to criticism, convinces one upon examination that the company really is "in a very bad financial condition". Our examination leads to the same conclusion. The general balance sheet of the company on December 31, 1917, shows assets of \$227,774.27 and liabilities of \$242,549.25, a deficit of \$14,774.98. The general balance sheet for November 30, 1918, eleven months later, contains assets amounting to \$215,438 and liabilities which total \$244,347.91, representing a deficit of \$28,909.91. The revenue from operation for eleven months ended November 30, 1918, amounts to \$19,406.71. The expense of operating for the same time is \$23,041.48, leaving an actual operating deficit of \$3634.77. Adding to this amount \$10,841.19, the amount of interest and other general charges, brings the total to \$14,475.96, as the shortage in the business operations of the company for the period named.

Using as a basis the franchise rates in Sag Harbor and the new proposed rates in territory served by the company outside of Sag Harbor, the revenue of the company would

have been increased \$3009.83 for the eleven months named, still leaving a deficit of \$11,466.13. Had the proposed rate been in operation for eleven months of 1918, the actual revenue would have exceeded the actual operating expenses by \$1252.05, upon the assumption that all the meters remained in service under the new rate, but there would still be a deficit of \$9589.14 when the fixed charges are considered. It can not be disputed that the proposed scheduled rates are reasonable in amount and should be allowed to remain.

The second point raised by the complainants, that the minimum charge of \$1 per month is unwarranted under the franchise and is unlawful and discriminative, can not be sustained.

On the 30th day of November, 1918, the company had 780 meters in its territory. Of this number an average of 194 per month for a period of eleven months showed an income of less than one dollar per month at the rate of \$2 per thousand cubic feet. An average of 57 of the meters per month showed no consumption of gas. Each one of these meters was a constant source of expense to the company. There is the cost of installing service; a force of employees must be kept ready to supply gas at any moment to these special customers or to others; and the meters must be regularly read.

It certainly would be unjust that these customers who use a sufficiently large quantity of gas to make service to them profitable, should be called upon to pay the expense incurred on behalf of those customers who make a very small return or no return at all to the company. The sum named as a minimum charge is fair in amount. There is no discrimination in fixing a minimum rate when all persons under the same conditions and circumstances are subject to that rate. The company has divided its customers into classes, placing all who use gas within certain prescribed amounts in one class and giving to them the same

rate. Under this classification of the company all persons who use not to exceed 500 cubic feet per month pay \$1 per month; all who use between 500 and 4000 cubic feet per month pay \$2 per thousand cubic feet; all who use 4000 cubic feet or over per month pay at the rate of \$1.80 per thousand cubic feet; and those who accept straight line meter service and use 5,000,000 cubic feet per year or over pay \$1.25 per thousand cubic feet.

The rates of the company are exactly in line with that proper and common business policy of giving to the large customer an advantage in price.

In the territory outside of Sag Harbor the franchise provisions with regard to rates have been superseded by agreement for a period of one year after the signing of the Treaty of Peace. The rates as filed should remain in force for the same period of time, when if necessary a proper determination as to rates may be made applicable to the whole territory in which the company operates.

All concur.

Petition of the UNITED STATES RAILROAD ADMINISTRATION, DELAWARE AND HUDSON RAILROAD, under section 54, Railroad Law, for consent to the discontinuance of the services of an agent at the South Corinth station on said railroad. [Case No. 6877.]

Where an agency station, maintained as such for many years, has become unprofitable on account of diminution of revenue due to war conditions, and increase of cost of maintenance due to an unnecessary increase in wages of the agent beyond the reasonable value of his services, consent of this Commission will not be granted to a proposed discontinuance of the services of the agent at such station.

Decided July 8, 1919.

Appearances:

Lewis E. Carr, Newton R. Cass, and Lewis E. Carr, jr., for the petitioner.

Clarence B. Kilmer, Saratoga, as attorney for objectors; and F. E. Harvey & Son (by F. E. Harvey), South Glens Falls; William A. Rowland, Porters Corners, R. F. D.; R. H. Densmore, Porters Corners, R. F. D.; Frank Tibbits, Porters Corners, R. F. D.; Wallace Howe, Porters Corners, R. F. D.; Charles Atwell, Porters Corners, R. F. D.; D. G. Eggleston, Porters Corners, R. F. D.; J. E. Angell, Greenfield Center; Richard Van Buren, Porters Corners, R. F. D.; D. M. Cloke, Greenfield Center; and Mrs. Yates Barber, South Corinth, in opposition.

KELLOGG, Commissioner:

This is an application to discontinue the railroad station at South Corinth in Saratoga county as an agency station, and maintain there a non-agency station only.

The application is based upon the following allegation in the petition: "That during the last few years there was a marked decrease in both freight and passenger business done at South Corinth as compared with previous years,

and together with the increased cost of maintaining this agency it is no longer necessary nor profitable to maintain an agency at this point."

To support this contention schedules have been submitted showing the freight revenues and the passenger ticket sales at the station in question during the years 1917 and 1918, and five months of 1919. They are as follows:

	<i>Freight revenues</i>	<i>Passenger receipts</i>	<i>Totals</i>
1917.....	\$974.09	\$281.91	\$1,206.00
1918.....	624.46	153.78	778.24
1919.....	852.79	76.09	428.09
	(5 months)		

It will thus be noticed that there has been a slight improvement in the average monthly business during the 5 months of 1919 over the average monthly business of 1918, but that the revenue is still very small.

The salary of the station agent paid by the railroad amounted in 1917 to \$816.80, and in 1918 to \$1080.15. In addition he received a small compensation from the express and telegraph companies for handling their business at this place. He is now under the minimum wage rule made operative by the Railroad Administration receiving \$105 a month, which will make his compensation for the current year, if continued throughout, still larger.

In 1917, therefore, the receipts of the station were about \$400 more than the salary of the agent, but since that date the salary of the agent has exceeded the combined freight revenue and passenger receipts of the office.

It is this shifting of the balance on which the applicant relies in its demand for the relief sought in this proceeding, not taking into consideration any of the other costs of handling the business.

It appeared from the evidence at the hearing, however, that although the income of this station is not substantial, yet it was very materially interfered with by war conditions. The principal freight export is wood, much of which is used in the manufacture of brick. One witness testified,

and it was not disputed, that tributary to this station there is still standing between 500,000 and 1,000,000 cords of wood available for this purpose.

It appears from the evidence of the fuel administrator of the county that the manufacturers of brick to whom this wood had previously been sold were very seriously curtailed in their operations by orders issued during the war, and that various embargoes were placed upon transportation from the station in question in 1918.

These conditions undoubtedly at that time very seriously interfered with the revenue which would otherwise have been derived from this station. The fact that the wood could not be shipped and was not marketable, discouraged the operators from continuing this business, and there has been no substantial quantity shipped since, for the reason that wood used for brick manufacture must be cut and dried for a period of from six to nine months before it is ready for shipment and use, so that operations of this character have not as yet been resumed.

This station has been maintained as an agency station since the construction of the road over 50 years ago. The nearest station is Kings, which is about three and three-tenths miles distant. If the agent is withdrawn at the South Corinth station and a caretaker substituted, express can not be handled at that point, telegrams can not be received there, and shippers and consignees of freight which is not prepaid would have to attend to payment thereof at Kings. This, of course, will result in an inconvenience, to which the patrons of this office are not accustomed. Against this they protest.

It would not seem proper to order the abandonment of a station merely upon a showing that owing to conditions existing during the war a smaller volume of business is transacted than previously.

In comparison with years prior to 1917 no figures have been submitted, but undoubtedly during the year 1918 which

came entirely within the war period there is a substantial decrease.

The fact that the salary of the agent has exceeded the freight revenues and passenger receipts was due to the very decided increase arising from the application of the minimum wage order. In 1917 the salary of the agent was \$70. By the increase to 48 cents an hour, his wages rose to about \$105 a month.

Here, therefore, another instance is called to the attention of this Commission of a case where by voluntary action of the Railroad Administration the salary of the agent is raised to such an unnecessarily large amount that the operation of the station as an agency one becomes unprofitable, and its discontinuance is asked for.

If by the application of a general rule which is grotesquely inapplicable to such a situation the maintenance of an agency station becomes unprofitable, certainly the patrons of the office should not be made to suffer by being deprived of facilities which they have enjoyed during the lifetime of most of them.

No one benefits by the failure of the Railroad Administration in a case like this, to limit the wages of the agent to a proper compensation for the services rendered. It is not a kindness to such agent to raise his wages to a sum so large that the business will not stand it, and then abolish his position.

The principle which was enunciated by this Commission in Case No. 6638, entitled "Petition of the United States Railroad Administration, Boston and Maine Railroad, to discontinue the Wayville and Reynolds stations," decided April 22, 1919, and in line with the other decisions of this body, should be applied here.

There the rule now applicable was announced in the following terms: "The problem to be solved in these cases is not whether the stations are so expensive that the company ought not to be burdened with their upkeep, but

whether some station arrangements can be made that will reasonably take care of the business offered and still not make too great a loss. The railroad should, in each instance, provide the most economical plan for conducting the station business. If the most economical plan requires a greater expenditure than the public convenience reasonably warrants, then discontinuance should be ordered."

There has in this case been no attempt to economize, but on the other hand an unnecessarily large expenditure for the agent's salary has been ordered.

The revenues of this station have been always small, but the cost of operation has been correspondingly low, and would continue to be if the agent were not recompensed beyond the reasonable value of his services.

The diminution of receipts is on account of temporary conditions due to the war, and the increase in expenditures is due to an unnecessary increase by the Railroad Administration of the salary of the agent.

Unless and until it is developed that post-war conditions indicate a marked falling off in this station from pre-war revenues, and economical principles are applied in its maintenance, an order of discontinuance, reversing the custom of over fifty years, should not be allowed. This application should be denied.

All concur.

In the Matter of the Discontinuance by AMERICAN RAILWAY EXPRESS COMPANY of Sunday pick-up and delivery service, and limitation of pick-up service on week days to 5 o'clock p. m., in the city of Buffalo. [Case No. 6816.]

The practice of the American Railway Express Company to omit Sunday pick-up service at Buffalo, N. Y., and to terminate the week day pick-up service at 5 o'clock p. m., held to be reasonable.

Decided July 8, 1919.

Appearances:

A. M. Hartung, 49 Broadway, New York city, as attorney for the American Railway Express Company.

F. E. Matthews, Main and Erie streets, Buffalo, as Superintendent of Buffalo division, American Railway Express Company.

H. S. Shafer, representing Ward & Ward, Inc., Fougerson street, Buffalo.

J. A. McCall, representing Sinclair, Rooney & Co., 469 Washington street, Buffalo.

Freeman Bradford, Traffic Manager, Buffalo Produce Exchange.

C. A. Taylor, Buffalo, as Secretary of the Motion Picture Exchange Managers' Association of New York State.

Frank E. Williams as Secretary, and *A. J. Keating* as Manager Traffic Service Bureau, Buffalo Chamber of Commerce.

Frederic C. Rupp, Assistant Corporation Counsel, for the City of Buffalo.

HILL, Chairman:

Ward & Ward, Inc., bakers, at Buffalo, having complained against the discontinuance of Sunday pick-up and delivery service in Buffalo, the Commission issued its order

under date of April 8, 1919, directing the American Railway Express Company to show cause why such service should not be resumed. Upon the hearing, the Buffalo Chamber of Commerce and various merchants appeared with additional complaints, and as some of them complained that the limiting of pick-up service on week days to 5 o'clock p. m. was objectionable, the inquiry was extended to cover that subject also. It appeared that the predecessor of the respondent, the American Express Company, had in 1917 put into effect an order discontinuing the Sunday service and terminating the week day service at 5 p. m., and that respondent was endeavoring to adhere to this practice. The complaint grew out of the fact that the order had not been strictly complied with by the local agent, and that a limited number of regular customers had had extra service extended to them because of their apparent urgent need therefor, in the shape both of Sunday service and week day service after 5 o'clock p. m. When in April, 1919, the respondent attempted to return to a strict observance of the order, these complaints resulted.

Public service corporations have the right to institute reasonable rules for the conduct of their business, and the question is whether or not the rule in question is reasonable. The rules which a common carrier adopts are presumptively reasonable, and the burden of establishing their unreasonableness is on him who assails them. (*Garricott v. N. Y. State Rys.*, 223 N. Y. 119; *Platt v. LeCocq*, 158 Fed. Reporter 723, and cases there cited.)

A striking aspect of the complaints and of the situation in Buffalo as to the demand for the classes of service in question as disclosed by the evidence is that the demand is in no sense general, but is confined to a very limited number of customers carrying on businesses which for reasons peculiar to themselves could make use of these special services. To be specific, the businesses in question are baking, millinery, fish, ice cream, and motion picture

exchanges. But only certain bakers and ice cream purveyors, and only one milliner, so far as appeared, required the service; and most of the fish dealers did not complain of the pick-up service, but desired that incoming shipments should be delivered out of hours to prevent spoiling, which the Express Company is willing to do; and but one fish company demanded pick-up service beyond the time limited in the regulation. The film companies, it seems, gather up the films after theater hours, and of course would be accommodated by a late night service. It appears also that the only inconvenience resulting from the rule is that shippers desiring to ship out of hours must furnish their own pick-up service, or in other words, deliver their shipments direct to the express company's offices which are kept open for the receipt of shipments during the entire twenty-four hours every day, including Sunday. The company also delivers incoming perishable shipments arriving on the platforms on Sundays if they would otherwise spoil. The question of reasonableness is thus greatly narrowed, because we find it is not a question of whether the shipments are prevented from moving at all, as would be the case were the receiving offices closed after hours and on Sundays, but whether or not it is reasonable that a very limited number of shippers who can make use of special service out of hours should themselves be put to the expense of rendering such service.

Examining the evidence, we find that the General Baking Company makes daily shipments to outside points of bread which is baked in the afternoon; the baking begins at noon, and is not ready for the last shipment until 8 p. m. They could bake in the morning and thus ship by 5 o'clock, but the objection is that the bread in the hands of the consumer the next morning would be three hours less fresh, and in order to supply customers on Monday they must make a Sunday shipment.

Sinclair, Rooney & Company, manufacturing milliners, have a rush period of three months each Spring and Fall, during which, by reason of the volume of business, they are not able to ship until 7 or 7:30 p. m., and they ship in the evening to save a day in delivery. Their goods are not perishable, at least in a commercial sense, and only a small percentage of their shipments are intrastate. It did not appear whether there were others in their trade similarly circumstanced.

Representatives of four fish companies testified, but with one exception their only concern was with incoming shipments which would spoil if held over for Monday delivery. But it seems that such shipments are delivered without delay. One such company represented that it frequently received wire orders late in the day and thought it should have week-day pick-up service up to 6 p. m. It would seem, however, that it should be able to conform to the usage of its competitors.

The two ice cream companies represented were more particularly concerned with respect to the practices of the company in connection with deliveries at the other end of their outgoing shipments which are not the subject of consideration in this case.

The manager of one of the motion picture exchanges testified that the films are assembled at their place of business after evening theater hours and delivered to the Express Company about midnight by their own trucks. As matter of course they would prefer that the Express Company should pick them up.

This is all the evidence on the part of complainants, and it did not appear either by direct testimony or by inference, as might naturally have been expected, that the particular cases developed were typical of large classes of cases of similar character; and while it will be assumed that the desire for the extended service in Buffalo is not absolutely confined to those who appeared and testified, it is not apparent

that the demand extends very much further, although of course others could and would use it were it supplied.

On the part of the Express Company it was shown that while the rule of 1917 was not promulgated for the purpose of saving expense, the saving is considerable, about \$8750 per month in Buffalo. It also appeared that the Buffalo express business is handled at a loss, and that as an entirety the business of the respondent is unprofitable. The controlling reason for the rule, however, was stated by Mr. F. E. Matthews, superintendent of the Buffalo division, as follows:

We had difficulty in getting men to perform the service. Our men as a class object to Sunday work, particularly in the vehicle service, and in an effort to make our business day and our business week conform as nearly as possible to the established business day of other concerns and to create decent working conditions for the men. . . . The service is unduly expensive, requires the keeping out of a certain amount of equipment that is not needed all the time and has to be kept out during the entire day [this related to Sunday service] in order to perform this particular service. . . . We can not turn out from six to eight or ten vehicles on the street alone. We have to have on duty a supervisory force so as to look after them, foreman and houseman and those who perform work in connection with the drivers, and additional employees at the stations and wagon supervisors. . . . It is a fact in managing the vehicle service such as we had on Sunday we would have to scour around among all the men to get them to work on Sunday, none of them really willing to work on Sunday. We really had to force them to come out. . . . None of them want to work on Sunday. We pay them when they do that, but regardless of that they do not want to work. They want their straight working week with a day off and they want that day to be Sunday. Men come to me and say "I want to go to church, I want to be in my family on Sunday". We have been through that very thoroughly.

Mr. Louis R. Gwyn, general manager of the Empire State department of the Express Company, stated the reasons to be to make a more endurable working day for the employees, and also because there always has been a tendency for unusual and special service to grow; "it is almost impossible

to confine it so that we felt we should have a definite, reasonable working period for the street service. In addition to that there have been at various times complaints from the men, objecting. It has always been a difficult thing to get men to work on Sundays. It wasn't that they objected to working without pay; they objected to working on Sundays whether paid or not; they wanted to be home Sundays. They also want, as a matter of common knowledge, a short working day, and we now have before us the necessity of still further shortening our day to an eight hour basis. . . . The men themselves have told me, they told me at Washington and in New York, that it wasn't that they were looking for overtime; they want to get home; and of course we have got to take cognizance of their desire, it has been expressed so forcibly. The length of the day now is nine hours."

It also appeared that the rule in question is of general application, and is not peculiar to Buffalo.

The respondent also pointed out the provisions of section 2143 of the Penal Code, prohibiting labor on Sunday excepting works of necessity and charity, but which further provides that such works are to be deemed to include whatever is needful during the day for the good order, health, or comfort of the community.

The question is solely that of the reasonableness of the rule in question. As shown above, it is presumptively reasonable. Do the facts disclosed in the record overcome this presumption so that the Commission would be justified in basing thereon a determination that it is unreasonable? On the contrary, I consider the rule just and wholesome, in view of the conditions shown, and if it is felt that the urgency of the shipments in question is justified by the requirements of the "good order, health, or comfort of the community," the fact standing alone that the receiving offices of the Express Company afford facilities for the receipt of ship-

ments at all hours, completely satisfies any such urgency if it can be said to exist.

While greater latitude is now observed than formerly with regard to Sunday observance, it is noticeable that the liberal movement in that regard is not in the direction of converting the day of rest into a working day, but indicates instead a tendency to permit of wider choice on the part of the individual as to what form of rest or recreation he will adopt. "In this State the Sabbath exists as a day of rest by statute and also by the common law, and the legislature has passed acts regulating its observance. Sunday laws exist in nearly every State in the Union. The statutes of the different States differ somewhat in details and strictness, but in nearly all the States common labor and traffic are prohibited." (*People v. Zimmerman*, 95 N. Y. Supp. 136-138.)

We think the aim of the respondent to have the working hours of its men conform to those of general lines of business, and to eliminate Sunday work in the vehicle service so that the men can spend their Sundays at home, is a wise one and should be encouraged, and we fail to find any feature in the evidence which tends to overcome the presumption of the reasonableness of the rule under discussion.

We have considered the case thus at length, not by reason of any apparent perplexity which is created by the facts, but because of the importance which the respondent attaches to the determination which the Commission is called upon to make. To us it seems clear that the good order, health, and comfort of the community are promoted rather than retarded by the rule in question affecting the Sunday service, and that every consideration involved, whether of law, of ethics, or of morals, must be resolved in its favor; and as to the week day limitation to 5 o'clock p. m., we find no ground upon which we can determine that it is unreasonable.

For the reasons stated, the complaints will be dismissed, and the order to show cause discharged.

All concur.

In the Matter of the Complaint of JOHN FITZGIBBONS, LEGISLATIVE REPRESENTATIVE OF THE BROTHERHOOD OF RAILROAD TRAINMEN OF THE STATE OF NEW YORK, *against* UNITED STATES RAILROAD ADMINISTRATION, NEW YORK CENTRAL RAILROAD (Wallkill Valley railroad), alleging violations of the Full Crew Law (section 54-a, Railroad Law). [Case No. 6830.]

The New York Central Railroad is more than fifty miles in length; a part of its system is the Wallkill Valley Railroad, which it operates under lease and which is less than fifty miles in length; such operation is entirely branch operation, and none of the trains continue on the main line after reaching the junction, nor do main line trains operate over the branch line.

Held, that the provisions of the Full Crew Law (section 54-a Railroad Law), which apply only to railroads more than fifty miles in length, do not apply to the operation in question.

Decided July 10, 1919.

Appearances:

John Fitzgibbons in person, with *Arthur B. Lanphier*, 86 State street, Albany, for complainant.

Visscher, Whalen & Austin (by Robert E. Whalen), 126 State street, Albany, for respondent.

BY THE COMMISSION:

Section 54-a of the Railroad Law provides that "no . . . corporation . . . shall run or operate . . . outside of yard limits on any railroad of more than fifty miles in length . . . a freight train of more than twenty-five cars" except with a certain prescribed crew; and also prohibits operation on any railroad of more than fifty miles in length . . . any train, other than a freight train, of five cars or more without a crew of not less than one engineer, one fireman, one conductor, and two brakemen.

The respondent has been operating the trains complained

of herein over what is known as its Wallkill Valley branch, formerly Wallkill Valley railroad, with crews smaller than those above prescribed. The railroad in question is leased by the New York Central railroad and operated as one of its branches. The New York Central railroad is much more than fifty miles in length, and the Wallkill branch referred to is much less than the length mentioned. It is operated as a branch from its junction with the main line at Kingston, N. Y., to Montgomery, a distance of thirty-two and a fraction miles. None of the trains continue beyond Kingston on the main line, but some of them continue in the other direction about four miles beyond Montgomery on the Erie railroad, to a point known as Campbell Hall. The distance the trains are operated therefore is at the utmost less than thirty-seven miles. The Full Crew Law is section 54-a of article 3 of the Railroad Law, and article 3 has for its title "Construction, Operation and Management". That seems to have physical rather than corporate considerations in view. From the fact that the statute does not apply to freight trains under a certain length even on roads exceeding fifty miles in length, it may well be that the Legislature felt safe in assuming that freight trains separately operated on roads or branches less than fifty miles in length would be of such moderate size that they also could safely be made an exception. This seems borne out by the fact that the largest train alleged in the complaint to have been operated contained thirty-six cars, and the trains generally contain from fifteen to thirty cars.

In *Chicago, R. I. & P. Ry. Co. v. State*, 111 S. W. Reporter 456, the Supreme Court of Arkansas held that a branch railroad under fifty miles in length has the rights of a railroad under fifty miles in length if operated as a branch; in other words, that the statute there being construed applied to the operation rather than to the ownership, and that to hold otherwise would be to establish a classification contrary to the true intent and meaning of the law.

It would seem reasonable to assume that the Legislature felt that the operation of the largest train which would be likely to be required on a branch of less than fifty miles in length was fully as easy and as safe to operate as a train of twenty-five cars having a much longer run on a main line. We think that was the intention of the Legislature, and it follows that the complaint should be dismissed.

All concur; Kellogg, Commissioner, in result.

KELLOGG, Commissioner, concurring:

I concur in the foregoing result.

The Wallkill Valley Railroad Company has leased its line, thirty miles long, to The New York Central Railroad Company, for an annual rental of 3½ per cent of its outstanding stocks and bonds.

Between the two companies the relation of lessor and lessee exists as to this line, and as to it the title and ownership is entirely disunited from that of the connecting line of the New York Central railroad.

The Wallkill Valley railroad is operated by The New York Central Railroad Company entirely distinctly and separately from its connecting line.

Neither as to its ownership or as to its method of operation is the Wallkill Valley railroad a "railroad of more than fifty miles in length" within the provisions of the Full Crew Law.

The fact that the Wallkill Valley is leased and operated by a railroad company which also operates a railroad of more than fifty miles in length does not, in my judgment, bring the former line within the provisions of the statute in question, as long as the operations of the two lines are kept entirely distinct, and no trains are run from points on the Wallkill Valley to points on the main line of the New York Central beyond the terminal of the Wallkill Valley or conversely.

In the Matter of the Complaint of the CITY OF JAMESTOWN against WARREN AND JAMESTOWN STREET RAILWAY COMPANY and JAMESTOWN STREET RAILWAY COMPANY as to proposed discontinuance of issuance of transfers between the railways of said companies. [Case No. 6810.]

Petition of JAMESTOWN STREET RAILWAY COMPANY under subdivision 1, section 49, Public Service Commissions Law, and section 181, Railroad Law, for permission to increase passenger fare in the city of Jamestown; also as to filing passenger tariff on short notice. [Case No. 6899.]

Decided July 15, 1919.

Appearances:

Ernest Cawcroft, Corporation Counsel, for the City of Jamestown.

Marion H. Fisher, 501-504 Wellman Building, Jamestown, Attorney, and *A. N. Broadhead*, Jamestown, President, for the Jamestown Street Railway Company.

Robert Jackson, Jamestown, Attorney, and *Hugh A. Siggins*, General Manager, for the Warren and Jamestown Street Railway Company.

FENNELL, Commissioner:

Case No. 6810 is a complaint of the City of Jamestown against the Jamestown Street Railway Company and the Warren and Jamestown Street Railway Company because of the proposed discontinuance of interchange of transfers.

Case No. 6899 is a petition by the Jamestown Street Railway Company to increase trolley fares in the city of Jamestown.

For brevity the companies will be designated herein as "Jamestown" and "Warren and Jamestown".

The Warren and Jamestown Company has a franchise

five cent fare restriction, coupled with an agreement to give transfers. The Jamestown Company is not so restricted.

The Jamestown Company, claiming it could not afford to carry transfer passengers at its proportionate share of the five cent fare, notified the Warren and Jamestown Company that it would cease to accept such transfers. The transfer arrangement has been continued, pending negotiations between the city and the Jamestown Company regarding a proposed increase in the city fare.

Conferences have been held by the representatives of the railway companies and the city officials, some of which conferences were attended by Mr. Barnes, chief of the division of electric railroads of the Public Service Commission.

The final outcome of the conferences was a tentative agreement that the city would not require the Jamestown Company to go into a valuation rate case if transfers were continued and ticket books could be bought at a five cent rate, and provided the Public Service Commission found that the Jamestown Street Railway Company was entitled to the increase.

At the close of the hearing on July 7, 1919, the Commissioner who held the hearing, upon the consent and with the approval of all the parties in interest, dictated the following:

It is agreed in open session before the Commission by the representatives of the two street railway companies and the representatives of the city that in the negotiations heretofore had between the representatives of the street railway companies and the representatives of the city, the Jamestown Street Railway Company insisting upon 18 tickets for a dollar, the representatives of the city on 20 tickets for a dollar, it was finally concluded and agreed between them that if an increase in cash fare was allowed it should be seven cents, in consideration of fixing on a rate of 10 tickets for fifty cents or 20 tickets for a dollar.

That if a five cent ticket rate is adopted, the Warren and Jamestown Street Railway Company will sell ticket books, as well as the Jamestown Street Railway Company, for use in the city on the city lines, transfers will be exchanged, and three cents of each five cent ticket will go to the Jamestown Street Railway Company and two cents to the Warren and Jamestown Street Railway Company. If a city cash fare

is paid on the Warren and Jamestown railroad, it being limited to five cents because of the franchise restriction, the Jamestown Street Railway Company will accept the transportation of that passenger at the same rate, three cents to the Jamestown Street Railway Company and two cents to the Warren and Jamestown Street Railway Company. If an increased fare is granted, and the passenger is a cash passenger and boards a car of the Jamestown Street Railway Company and transfers to the Warren and Jamestown Street Railway Company, the proportion or share of the Warren and Jamestown Street Railway Company shall remain at two cents, and whatever the increase may be it will be added to the Jamestown Street Railway Company's share.

It is further agreed that the foregoing transfer arrangements and division of rates shall continue while the rates remain as fixed in this proceeding.

It also was conceded on the hearing that the various conferences and the newspaper accounts thereof had given so much publicity that short notice would not be objected to.

Following are tabulations, made up from the company's reports, showing the need of additional revenue. There is also an estimate showing the expected gain from the proposed increase.

STATISTICS OF ELECTRIC RAILROAD OPERATIONS

	Year ended June 30, 1910	Year ended December 31, 1918
Number of revenue passengers.....	4,948,656	5,115,157
Number of transfer passengers.....	1,196,530	1,361,157
Number of free passengers.....	89,994	221,497
Total number all passengers.....	6,235,180	6,697,811
Number of car-miles.....	783,838	929,321
Number of car-hours.....	109,549	122,276
Average revenue per car-mile.....	26.2¢	47.9¢
Average revenue per car-hour.....	\$1.88	\$3.64
Average expenses per car-mile.....	16.9¢	45.1¢
Average expenses per car-hour.....	\$1.21	\$3.43
Operating ratio (operating expenses to operating revenues)...	64.4%	94.1%
Ratio of transfer to revenue passengers.....	24.2%	26.7%
Average revenue per passenger (total rev. trans., total pass.)...	2.97¢	3.77¢
Average passengers per car-mile.....	8.0	7.2
Average passengers per car-hour.....	57.0	54.8

COMPARATIVE STATEMENT OF INCOME ACCOUNT FOR THE YEARS MENTIONED

	Year ended June 30, 1910	Year ended Dec. 31, 1917	Year ended Dec. 31, 1918	Increase or decrease 1918 compared with 1910	
				Amount	Per cent
Operating revenues.....	Dollars 205,504.49	Dollars 442,435.40	Dollars 444,912.90	Dollars 239,408.41	% 116.5
Operating expenses.....	132,418.55	376,943.12	418,552.84	286,134.19	216.3
Net operating revenue.....	73,085.94	66,182.28	26,360.06	D46,726.78	D63.8
Taxes accrued on electric railroad.....	9,316.94	13,689.52	22,542.25	13,225.31	142.0
Income from electric railroad operations.....	63,768.90	52,692.76	3,817.81	D69,651.09	D94.0
Non-operating income.....	14,019.79	27,823.18	28,868.40	14,348.61	102.3
Gross income.....	77,788.69	79,915.95	32,186.21	D45,608.48	D58.6
Deductions from gross income:					
Interest accrued on funded debt.....	18,000.00	18,000.00	18,000.00	.....	.....
Other interest deductions.....	47,119.31	89,732.37	84,202.90	37,083.59	78.8
Total deductions from gross income.....	65,119.31	107,732.37	102,202.90	37,083.59	56.8
Net corporate income.....	12,669.38	D87,816.48	D70,016.69	D62,686.07	D688.8

Note: "D" prefixed to a figure denotes deficit.

JAMESTOWN v. JAMESTOWN ST. RY. CO. ET AL. 301

COMPARATIVE BALANCE SHEET JUNE 30, 1910, AND DECEMBER 31, 1918

	Year ended June 30, 1910	Year ended December 31, 1918
Assets:	<i>Dollars</i>	<i>Dollars</i>
Total fixed capital.....	747,202.99	1,201,376.68
Current assets:		
Materials and supplies.....	21,044.38	1,070.68
Cash.....	156.19	302.00
Bills and notes receivable, miscellaneous.....	1,463.00	1,508.61
Accounts receivable, system corporations.....		450,619.92
Accounts receivable, miscellaneous.....	469,579.97	429,926.16
Miscellaneous current assets.....	132,871.09	28,783.40
Total current assets.....	625,114.63	910,838.09
Construction work in progress.....	78,146.16	38,075.56
Corporate deficit.....		303,463.74
Totals.....	1,450,463.78	2,455,126.75
Liabilities:		
Total stock.....	250,000.00	250,000.00
Total long term debt.....	300,000.00	300,000.00
Current liabilities:		
Loans and notes payable, miscellaneous.....	240,653.52	336,469.66
Accounts payable, miscellaneous.....	524,087.98	1,328,075.41
Total current liabilities.....	764,741.50	1,664,545.07
Accrued amortisation of capital.....	858.16	240,681.68
Corporate surplus.....	134,864.12	
Totals.....	1,450,463.78	2,455,126.75

JAMESTOWN STREET RAILWAY COMPANY

*Statement of Estimated Passengers Carried and Estimated Revenue Resulting from Increase
in Passenger Fares: 7 cents cash fare; 90 tickets \$1; 10 tickets 50 cents;
Year ended December 31, 1918.*

Number of Passenger Fares Collected

	Five cents	Other	Totals
	<i>a</i>	<i>b</i>	<i>c</i>
South side loop.....	285,384	68,423	373,807
North side loop.....	484,730	122,455	607,184
Falומר.....	1,237,349	471,728	1,709,077
Lakewood.....	588,738	245,023	834,361
Celoron.....	561,823	133,841	695,664
Newland.....	365,848	91,242	457,090
Willard.....	372,724	65,240	437,964
	3,896,605	1,218,552	5,115,157

302 PUBLIC SERVICE COMMISSION, SECOND DISTRICT

Estimated Number of Passengers per Year

Estimated number of passengers at seven cents	Per cent decrease	Estimated number of ticket fares	Estimated number of passengers carried, totals
<i>d</i>	<i>e</i>	<i>f</i>	<i>g</i>
88,400	25.0	176,200	264,600
122,500	15.0	412,000	534,500
471,700	.....	1,237,300	1,709,000
245,600	.....	588,700	834,300
133,800	.....	561,800	995,600
91,200	15.0	310,900	402,100
66,200	10.0	336,500	400,700
1,218,400	.....	3,622,400	4,840,800

Estimated Passenger Revenue per Year, based on estimated passengers carried as per columns d and f, and revised rates as per heading.

1,218,400 passenger fares @ 7¢.	\$85,288	Passengers carried 1918 (col. c).	5,115,157
3,622,400 passenger fares @ 5¢.	181,120	Passengers estimated 1919 (col. g)	4,840,800
Total estimated passenger revenue	\$266,408	Decrease passengers carried (compared with 1918)	274,357
Passenger revenue 1918	249,971	Per cent of estimated decrease	5.36 %
Increase in estimated passenger revenue	\$16,437		

The need of additional revenue is apparent from the above figures. The first and second quarters of 1919 show the deficit to be decreasing, but not to have disappeared.

<i>Net deficit</i>	1918	1919
First quarter	\$18,582.86	\$7,583.82
Second quarter	10,937.18	1,763.71

The figures for the second quarter are from a preliminary report from the company's auditor, and are subject to possible modification.

The necessity for the increase being shown and the transfer privilege being continued, the Jamestown Street Railway Company should be permitted to put its proposed schedule of rates into effect, and may do so on three days' notice.

An order has been made accordingly.

All concur.

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of CONSUMERS OF GAS IN THE CITY OF NEWBURGH *against* CENTRAL HUDSON GAS AND ELECTRIC COMPANY as to increase in price charged for gas. Also Complaint of the Company, in its answer, asking that the increased price be sustained. [Case No. 6398.]

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of PURCHASERS OF GAS IN THE CITY OF NEWBURGH *against* CENTRAL HUDSON GAS AND ELECTRIC COMPANY as to former price charged for gas, increase in price for gas, and as to "illuminating power, purity or pressure" of gas furnished. Also Complaint of the Company, in its answer, asking that the increased price be sustained. [Case No. 6402.]

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of PURCHASERS OF GAS IN THE CITY OF POUGHKEEPSIE *against* CENTRAL HUDSON GAS AND ELECTRIC COMPANY as to increase in price of gas and as to former price. Also Complaint of the Company, in its answer, asking that the increased price be sustained. [Case No. 6408.]

1. In the case of a corporation furnishing both gas and electric service, if complaint is made as to the rates for one branch of the business, it must be considered separately. For example, electric consumers may not be required to make up a loss on the gas business. (*Municipal Gas Company v. Public Service Commission*, 225 N. Y. 89.)

2. After an investigation of the investment, revenue, and expenses relating to the gas business of the respondent, it was

Held, That a rate of \$1.50 per thousand cubic feet for gas in Newburgh and Poughkeepsie, estimated to yield a return of 6.13 per cent, with a possibility of 7 per cent, was not unreasonable under the conditions prevailing for the past two years, but the rate was fixed for a period of only one year in the hope that conditions may in the meantime change so as to permit a lower rate.

Decided July 15, 1919.

Appearances:

D. W. Wilbur, 42 Cottage street, Poughkeepsie, and *Thomas D'Arcy*, Poughkeepsie, for complainant.

Henry Wilson as City Manager of the City of Newburgh.

Gould & Wilkie (by John L. Wilkie and Mason H. Bigelow), 2 Wall street, New York city, for the respondent.

T. R. Beal, Poughkeepsie, as President of respondent.

IRVINE, Commissioner:

The titles of these cases sufficiently indicate their nature. The respondent, by tariffs issued to become effective March 1, 1918, made certain changes in its rather complicated rates for gas in the cities of Newburgh and Poughkeepsie which constitute practically its field of operations. The rate for ordinary consumers was increased from \$1.25 to \$1.50 per thousand cubic feet. It is this rate which the complaints attack. Hearings were begun in June, 1918. The Newburgh complaints were signed by about one thousand individuals of whom only one appeared at the hearing, and the evidence by him offered consisted of tables showing rates for gas in various other communities. The Poughkeepsie case was vigorously contested. The cases were not finally submitted for decision for several months. The evidence was taken, as will be noticed, at the critical period of the war, and the Commission was reluctant to determine a rate on evidence relating to conditions at that time. Furthermore, the representatives of the complainants in Poughkeepsie desired that the investigation include the electrical operations of the company, on the theory that the price of gas should not be increased even if the gas operations should be found unprofitable, provided the company as a whole was earning a fair return. The sitting Commissioner declined to receive such evidence on the ground that the two branches of the business must be considered separately, and that the electric consumers could not be required to make up a loss on the gas business. Doubt was, however, felt upon this point, and a

case was pending demanding its judicial determination. This case was decided in accordance with the theory expressed by the sitting Commissioner January 17, 1919. (*Municipal Gas Company v. Public Service Commission*, 225 N. Y. 89.) So much time had then elapsed that it was thought that conditions might have changed so as to require further evidence.

The parties were consulted, and after considerable delay the Commission was informed by each side that it did not desire to make further proof. The representative of Poughkeepsie, however, stated that he desired an inquiry into the reasonableness of the electric rates so that both matters might be determined at the same time. He was informed that there was no complaint pending, but that if one were filed as provided by statute the two matters would be disposed of at the same time. No such complaint has yet been filed, so that we shall proceed to determine the gas cases on the evidence presented at the hearing together with such information as is furnished by the 1918 report of the company of which the Commission takes notice.

While the corporation in its evidence undertook to segregate in all respects its operations in Newburgh from those in Poughkeepsie, the apportionment of certain operating expenses was necessarily somewhat artificial. It was conceded that the situations in the two cities are so nearly alike that there should properly be no difference in rates. This is borne out by a few figures:

Tangible fixed capital, Newburgh	\$586,307 91
Tangible fixed capital, Poughkeepsie	804,275 28
Ratio	70%
Gas sales in 1918 report, Newburgh	137,795 cu. ft.
Gas sales in 1918 report, Poughkeepsie	188,481 cu. ft.
Ratio	72%

Other items which may be strictly allocated show similar ratios. It is, therefore, more satisfactory in handling the figures to take the company as a whole than to undertake an apportionment which in some instances would not be satisfactory, and which could not affect the result.

INVESTMENT

There is in this case little trouble in fixing the amount of investment for the purpose of basing the rates. At the time the present corporation was formed in 1911 by a consolidation of previously existing corporations, a close examination was made for the purpose of ascertaining the cost of the property. This was allocated between gas and electricity, and between Newburgh and Poughkeepsie. With subsequent adjustments because of additions and retirements, the fixed capital stood at the time of the hearing at \$1,582,858.23. No question seems to be raised as to that amount. The allowance as the investment of floating capital is severely criticized, and in part the criticism is well founded. According to the books the total floating capital amounts to \$186,643.97. This includes certain certificates of deposit with interest amounting to \$21,703.79. It is usual to allow as floating capital, in addition to materials and supplies on hand, cash assets equal to two months' revenue. Two months' revenue would be about \$67,000. Cash on hand and accounts receivable amount to \$67,345.11. It would appear, therefore, that the certificates of deposit should be excluded, leaving as properly to be considered floating capital \$134,779.83, or a total investment in the gas department of \$1,717,638.06.

INCOME

At the time of the hearings we had the actual income account for 1917 and for the first four months of 1918. The corporation undertook to build up a prospective income account for 1918 by estimating the remaining eight months. We have now before us in the report of the company the actual income account for the entire year. The complainants criticized certain items of expense. The criticism is based upon what is claimed to be a gross disproportion between the cost of superintendence and labor, and that for general officers and clerks, commercial administration, and promotion expense. Superintendence and labor cost in 1917 amounted to \$14,761.13,

while the other group amounted to \$60,566.15, of which \$28,419.82 was for general officers and clerks. This calculation makes no allowance for labor on repairs, amounting to many thousands of dollars. Wages of meter readers and collectors are in the item of \$28,419.82 for general officers and clerks. The labor cost in the manufacture of water gas is comparatively slight. We do not feel justified in scaling down the actual expense as being unreasonably high.

There was much evidence concerning prices paid for coal. There is no evidence that anything more than the market price was paid. In fact, the evidence is to the contrary. Comparison has been made from reports on file with the Commission of the cost of coal in 1917 to the larger companies making water gas. The average cost to eleven of these companies was \$5.92 per ton. The average cost in Poughkeepsie was \$5.53 per ton.

It is interesting to compare the operating expenses of 1917 and 1918, and also to compare the actual results for the year 1918 with the estimate based on four months' actual experience, and presented on behalf of the corporation. The following table presents these figures:

	1917	1918	Company's estimate increase	Actual increase
	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>
Works superintendence and labor..	14,761.13	22,036.13	.....	7,275.00
Boiler fuel.....	4,218.55	7,029.22	3,072.00	2,810.67
Steam purchased.....	6,971.25	10,643.43	.....	3,672.18
Generator fuel.....	86,930.96	56,049.63	7,212.00	19,118.68
Gas oil.....	76,268.77	102,747.45	30,212.00	27,478.68
Other production expenses.....	3,982.93	12,345.77	5,000.00	8,362.84
Transmission and distribution ex- penses.....	29,882.70	28,721.20	.....	*1,161.50
Commercial expenses.....	32,146.33	25,367.28	.....	*6,779.05
General administration.....	39,887.44	37,341.37	.....	*2,546.07
Insurance.....	7,644.73	8,272.76	1,000.00	628.03
General amortisation.....	22,339.72	33,028.14	.....	10,688.42
Other general and miscellaneous ex- penses.....	9,809.24	8,018.92	.....	*1,790.38
Increases not specifically assigned, estimated as wages increases and war risk insurance.....	.....	.....	*8,783.00	.....
Total operating expenses.....	283,843.74	351,601.30	55,259.00	67,757.56
Taxes.....	16,847.28	25,044.36	7,361.00	8,197.08
Uncollectible bills.....	716.76	1,014.37	.....	.....
Total revenue deductions.....	301,407.78	377,660.03	62,620.00	76,252.25

* Decreases.

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It will be observed that there was charged to general amortization in 1918, \$10,688.42 more than in 1917. This charge is not accounted for. It may further be noticed that there was an actual increase in the cost of generator coal of \$19,118.68, whereas at the time of the hearings the company estimated an increase of only \$7212. There was no material difference in the amount of gas manufactured in the two years. A great deal more coal was used in 1918 than in 1917, and this difference accounts for nearly all of the difference between the corporation's estimate and the actual result. There was considerable increase in the cost of oil because in 1917 oil was obtained under an existing contract and the average cost was only 6.1 per gallon. The price in 1918 was very much higher.

The income account for the two years may be thus summarized:

	1917	1918
Operating revenues	\$403,920.19	\$472,259.19
Total revenue deductions.....	301,407.78	377,600.03
	<hr/>	<hr/>
Return on investment of \$1,717,688.06.....	\$102,513.41 5.97%	\$94,599.16 5.51%

The 1918 figures reflect ten months of operation under the new rates. If we reduce the general amortization to the 1917 figure, the expenses are thereby reduced by the amount of \$10,688.24, with a corresponding increase in income and a return of 6.13 per cent. The average return for the past five years has been something under 6 per cent.

CONCLUSION

An estimate of operating results for 1919 involves too many elements of conjecture to render it of much service. There is nothing to indicate a substantial addition to revenue. It is to be hoped and only hoped that expenses may decrease. It is not probable that the return can exceed 7 per cent. During the war the Commission was inclined when rate adjustments became necessary to permit increases only far enough to meet operating expenses, taxes, and interest on bonds, or in other words, merely to insure solvency. The

time has now come when we may properly consider a fair peace time return on the investment. It is necessary to do so if utilities are to be preserved and capital invited in order to make extensions and betterments essential to the rendition of proper service. A return of 7 per cent or less can not be considered an unduly large return. It may be that coal prices and oil prices, and perhaps some other elements of cost, will soon decrease to such an extent as to warrant a lower rate. On the figures before us we can not hold that the present rate is at the present time unreasonably high, and the complaint must, therefore, be dismissed, but the current schedule should not be fixed for a period longer than one year. It is true that the corporation has been paying dividends during the two years under special examination of 8 per cent per annum, and that in 1918 the corporate surplus was increased by the amount of \$5524.82. This indicates higher earnings on the electrical side than on the gas side, but for reasons already stated the electrical operations are not before the Commission, and therefore no opinion is expressed or even entertained as to the reasonableness of the electric rates.

All concur.

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Petition of WALTER J. BLEVINS under the Transportation Corporations Law for a certificate of public convenience and necessity for the operation of a stage route by auto buses in the city of Glens Falls, it being also proposed that the route shall be operated to the hamlet of Bolton Landing, Warren county. [Case No. 6920.]

Where an auto bus stage line is being operated between a point within and a point outside a city under a certificate of public convenience and necessity issued by this Commission, another certificate should not be issued to a proposed competing line, where the established line is furnishing adequate and satisfactory service and the patronage would be insufficient to maintain two lines; especially where access to the city over a substantial portion of the proposed route, including that part within the city, may be had over a trolley line and a steam railroad.

Decided July 24, 1919.

Appearances:

James S. Kiley, Glens Falls, for the applicant.

Chambers & Finn (by Mr. Finn), Glens Falls, for The Glens Falls-Bolton Stage Line Company, Inc.

James McPhillips and *C. E. Fitzgerald*, Glens Falls, for the Hudson Valley Railway Company.

KELLOGG, Commissioner:

This is an application by Walter J. Blevins of Glens Falls, under chapter 667 of the laws of 1915, for a certificate of public convenience and necessity for a stage route to be operated by auto buses in the city of Glens Falls, the line to run from the Hotel Ruliff, a central point in said city, over Glen street to the city boundary, thence northerly to the hamlet of Bolton Landing, a distance of about twenty-two miles, passing through several settlements including the incorporated village of Lake George which is distant about nine miles northerly from Glens Falls.

There is at present in operation over this entire route an automobile stage line known as The Glens Falls-Bolton Stage Line Company, Inc.

There is also connecting the village of Lake George and the city of Glens Falls the Hudson Valley Railway, over which are operated fifteen cars per day each way during the summer season and about half as many during the winter months.

Lake George and Glens Falls are also connected by The Delaware and Hudson Company which operates a steam railroad and carries passengers between said communities.

The northerly portion of the proposed route extends over a state highway skirting the westerly shores of Lake George between Lake George village and Bolton Landing, and over the waters of this lake during the summer season, there is maintained a steamboat line which also to some extent affords facilities for transportation of passengers from and to points on its shores.

The present stage line was incorporated May 21, 1910, and on November 8, 1913, it was granted a certificate of convenience and necessity by this Commission to operate the line in question. During late years it has conducted its service by the use of two buses with a seating capacity of sixteen passengers each.

These are run on a schedule of five round trips a day during the months of July, August, and September, and during the remainder of the year are run on a schedule of two round trips per day except when the weather prohibits their operation. This duration of non-operation is of greater or less length depending upon the severity of the season and the corresponding road conditions.

These buses are neat in appearance, and are kept in an attractive and clean condition. The management of the line and the service furnished by it has been so good as to attract to its support the commendation of a very large proportion of the people served by it, many of whom, both by attendance

at the hearing and in signing a petition filed with this Commission, have protested against the issuance of a certificate permitting the operation of a competing line.

In view of this somewhat unusual attitude on the part of the public, I feel that the operators of the present line have been most successful in meeting the public demands, and stand in a position of popularity seldom held by public service corporations.

The present line has submitted a statement of its receipts and disbursements for the eighteen months ended June 30, 1919. This period is shown by the evidence to have been as good if not better than any other period during the operation of the line.

The two owners of the stock of the company, which is capitalized at \$5000, and whose tangible assets have a value of \$3600, operate the buses. In making up their statement of cost of operation which they submitted, they allow themselves each thirty dollars per week for services in operating the conveyances during the period of actual operation.

The accountant has also charged up \$250 per annum for depreciation of each of the buses, which are inventoried at \$1650 apiece. There is also a charge of \$300 per annum for an item called "property damage and fire loss": \$150 on each conveyance. This item, as I understand it, stands in lieu of insurance, which seems not to be carried by the line, and is no greater and is probably less than the premium on insurance policies protecting the company from casualty liability and fire losses would amount to.

The depreciation of \$250 a year on the auto buses I think is moderate, and I am also satisfied that the amount charged by the stockholders for their personal services, in view of the responsibility devolving upon them and the long hours of work, is entirely reasonable.

Making the allowances as suggested, the line was operated during the year of 1918 at a loss of \$192.67 in actual operation. This makes no allowance for interest or other overhead charges. The only months during which a profit was

shown were the months of July, August, and September. During the other months the enterprise was conducted at a loss. During the six months of the current year, upon the same basis, there is shown a loss of \$358.74, exclusive of interest charges.

It is quite apparent, therefore, that if the resources of this company are to be depleted by competition to any appreciable extent, it will soon be compelled to go out of business or at least very materially curtail its service.

There is some evidence tending to show that at very infrequent periods there has been a crowding of the buses. This has happened undoubtedly on some holidays and Sundays, but certainly there has not been evidence of this to a sufficient extent to authorize the issuance of a certificate of convenience and necessity to a competing line. The crowding of all public utilities on such extraordinary occasions is matter of common knowledge and experience.

The total capacity of the present line as now operated without overcrowding is one hundred and sixty through passengers daily. The gross receipts therefrom would be about \$120 per day, or about \$3600 per month.

The most prosperous month in the history of the line as disclosed by the evidence was August, 1918, when the gross receipts were \$1428.54, or less than two-fifths of capacity of the existing line as now equipped and operated.

From this also it appears conclusively that the demands of the public are more than provided for.

Furthermore, it should be borne in mind that if there were any reasonable demand for better accommodations the buses could be run more frequently and the present equipment could be added to.

This Commission ought not to encourage a citizen to enter into competition of this kind by issuing to him a certificate of convenience and necessity, which unless conditions very materially change would only result in ultimate failure, not only to the existing line but to the new competitor.

In this regard the case is very similar to others which have come within the purview of this Commission, where a bus line has been established and the business is sufficient barely to maintain it, and if competitive lines be permitted disaster would fall upon both. As stated in the *Matter of the Petition of Buschini*, in the Public Service Commission, Second District, Reports, Volume 7, at page 301 —

“The danger is that the business being divided between two carriers will be profitable to neither, and that in the long run the equipment of both will wear out in unprofitable service and neither will be able to continue. The result would be that the public would not be able to get any permanent service whatever.”

In addition, on the southerly part of the line, including that part within the city of Glens Falls, over which alone our jurisdiction extends under the statute, there is a trolley railroad furnishing sufficient and frequent service, and also a steam railroad carrying passengers at somewhat more infrequent and irregular intervals.

The petition should be denied.

Chairman Hill and Commissioners Barhite and Fennell concur; Commissioner Irvine dissents, in a memorandum.

IRVINE, *Commissioner*, dissenting:

I would concur in this Opinion if I thought the Commission had any authority in the matter. I do not think so, and therefore dissent, for the reasons stated in the *Matter of the Petition of Bartholomew*, 5 P. S. C., 2nd District, 96. The Legislature at one time conferred a certain measure of authority upon the Commission in such matters, but such authority as was conferred was expressly revoked by laws of 1915, chapter 667. I still believe that to use the power granted by the Legislature relating to city traffic alone, in order to regulate competition outside the city, is a usurpation of authority.

In the Matter of Practice of UNITED STATES RAILROAD ADMINISTRATION, BOSTON AND MAINE RAILROAD, with respect to employees in charge of locomotives under steam which are being towed by another locomotive alone or in a train. [Case No. 6865.]

Locomotive engines should not be towed under steam except under the control of an engineer or a fireman with at least one year's actual experience, and not in charge of the latter until he shall have established his ability to discharge properly the responsibilities of the situation by satisfactory examinations and tests.

Decided July 24, 1919.

Appearances:

William F. Fitzsimmons, 95 State street, Albany, as Attorney for Brotherhood of Locomotive Engineers.

Jarvis P. O'Brien, 16 First street, Troy, for the United States Railroad Administration, Boston and Maine Railroad.

KELLOGG, Commissioner:

This matter comes to the attention of this Commission upon a letter signed by W. C. Whish, Legislative Representative of the Brotherhood of Locomotive Engineers.

This letter is in the nature of a complaint against the Boston and Maine Railroad for permitting engines to be towed under steam manned only by a fireman. In certain features of the complaint it seems to be limited to the placing of an "inexperienced" fireman in control of such an engine, but the general allegations of the letter and the subsequent attitude of the complainant upon the hearing indicated that the complaint is broad enough to be deemed a protest against the placing of any fireman in the control of an engine thus being towed, and a demand that such engines be manned by engineers.

The practice as it now exists upon said railroad is to dispense with the services of an engineer upon a locomotive

when being towed under steam, and to place the same in the care of a fireman only. The officials assert that caution is used in the selection of such fireman, that he be competent to discharge properly the duties arising in the situation.

Certain of these duties are those of an engineer rather than those of a fireman. The supply of water to the boilers must be attended to, the feeding of the lubricants must be constant, the air-brake system must be kept in such condition as not to counteract the efforts of the engineer upon the towing engine to stop the train at any time, and the person in charge should have sufficient acquaintance with the machinery and running gear of an engine to detect quickly any defect developing therein and to immediately see that proper means are taken to avoid danger should defect arise.

Instances have been called to the attention of the Commission where persons in charge of engines thus being transported, either through gross stupidity or the most culpable carelessness, ignored the plainest demands of prudence in connection with the care of their engine, showing an utter absence of all sense of the grave responsibility of the position in which they were placed. No serious accidents on this account have been called to the attention of the Commission, but on several occasions the danger line has been too closely approached.

Upon this railroad a fireman is required to serve a period of four years before he is elevated to the rank of engineer, and after he is elevated to such rank he must run his engine a substantial number of miles before he is permitted to operate an engine on through passenger trains. In this regard the company is to be highly commended for requiring extended preparation before permitting an employee to operate an engine, thus being careful to safeguard not only its employees but also the persons and property intrusted to its care.

It becomes an object to the fireman not only to discharge properly the duties peculiar to that employment, but also to

qualify himself by observation and by receiving instruction to rise eventually to the rank of engineer, and while performing the duties of a fireman he becomes qualified, if he is efficient, to afterwards discharge the responsibilities of the more important position.

The duties above enumerated, which must be discharged by a person in control of an engine being towed under steam, are the duties ordinarily performed by an engineer, but they are mere elemental duties of that position, and ones which a fireman early in his acquisition of knowledge of the engine ought to acquire and be able to perform if possessing ordinary intelligence and sensing only a moderate degree the responsibility of his position.

A fireman after a year of actual service ought to be sufficiently informed to be safely intrusted with the operation of an engine under such conditions, if capable and alert. But it would seem that the selection of a fireman to perform these duties, in view of the experience which has been encountered, ought not to be left to the foreman, but his availability should be determined by prescribed examinations and tests and stand of record.

From the foregoing it would seem that it would be entirely safe to permit the control of an engine being towed under steam to be exercised by a fireman, after actual experience for one full year in the discharge of his duties, but only upon condition that he has passed proper examinations and tests as to his competency and ability to discharge all of the duties incumbent upon a person placed in charge of such engine, said examinations to be held and tests conducted by the railroad company and a record thereof kept, at all times accessible to this Commission and its representatives.

All concur.

In the Matter of the Complaint of GEORGE S. BUCK AS MAYOR OF BUFFALO, and TOWN OF CHEEKTOWAGA, Erie county, against WILLIAM J. JUDGE, and the PEOPLES GAS LIGHT AND COKE COMPANY OF BUFFALO, lessor, as to price proposed to be charged for manufactured gas, as to the quality of the gas, as to service and facilities, and as to plant and appliances.

Also Complaint of respondents, in answer, asking that the increased rates be approved. [Case No. 6436.]

1. *Defects in service as affecting rates:*

Unless the service given by a public utility is inherently bad, or a service generally below the standard is attempted to be supplied, or the defective service is so prolonged as to give it a chronic aspect, complaints against local and temporary failures of service such as are common to all public utilities can not properly be considered as a factor in the making of the rate.

2. *Rate limitation in franchise of company which was afterward merged by company possessing franchise free from limitation:*

The Queen City Gas Light Company laid mains in the streets of the city of Buffalo under an act of the legislature which limited the price to be charged for gas. Later the company was merged into the Peoples Gas Light and Coke Company of Buffalo, and the latter company leased all of its property to the Buffalo Gas Company, which also became the owner of the stock and bonds of the Peoples Company. The present operator has become the owner of the franchises and properties of all of the companies, including the lease and including also a franchise which was held by the Buffalo Gas Company to lay and maintain mains in all of the streets of the city of Buffalo, which contains no limitation upon the price to be charged.

Held, that the limitation upon the price which might be charged by the Queen City Company does not apply to gas furnished from mains laid under its restricted franchise, in streets included within the unrestricted franchise of the Buffalo Gas Company, and now operated by the common owner of both franchises.

3. *A gas lighting company can not be required to build and maintain a coke plant as a means of cheapening gas output:*

A gas lighting company can not be required by the Public Service Commission to construct and maintain a coke plant on the theory that the byproduct gas from such a plant would provide the public with a cheaper supply of gas than the company is now furnishing.

4. *Basis for rate:*

The public is entitled to be served by a reasonably modern plant which is not obsolete or wasteful in its method and which turns out its product with some reasonable degree of economy. And where by reason of antiquated plant and methods, and of the results of ruinous competition the manufactured gas supplied by a lighting company must be sold at a price greatly in excess of that generally prevailing, in order to secure a reasonable return on the investment, the Commission has power to fix what it considers a commercial price—what the traffic will bear—having also a close relation to what would be an approximately fair return on the investment in a reasonably modern plant conducted with a fair degree of efficiency; and in arriving at such a rate can be guided to some extent by rates prevailing in other communities of comparable size and location.

5. *Differential between rates for public and for private lighting:*

A slight differential between rates for public and for private lighting is not vital where the relation of each rate to the total revenue is considered in the making of both rates, and where there is some saving in expense on the gas furnished the municipality it is proper that the rate for such gas should be slightly lower than the rate for private lighting.

Decided July 24, 1919.

Appearances:

Frederic C. Rupp and *Herbert A. Hickman*, Assistants Corporation Counsel, Buffalo, for complainant.

Kenefick, Cooke, Mitchell & Bass (by Daniel J. Kenefick), Marine Bank Building, Buffalo, as attorneys for respondents.

HILL, Chairman:

This complaint is made on behalf of the City of Buffalo against the new schedule of rates for artificial gas to be furnished to the City of Buffalo and its inhabitants, which became effective May 27, 1918. The new rate increased the price to private consumers from \$1.20 to \$1.65 per M cubic feet, with a discount of 20 cents per M for prompt payment, and increased the price paid by the municipality for lighting its streets and buildings from a flat rate of 90 cents to \$1.65, with the same discount. Thus the new schedule proposed one uniform rate for both public and private lighting. The

schedule further requires a deposit of \$7.50 for each main to curb service installation, with certain conditions which are not material as this feature of the tariff is not seriously challenged.

The ground of the complaint is that the increased rates are unjust and unreasonable, excessive, and unlawful.

Allegation is also made that Mr. Judge is an officer of the National Fuel Gas Company, which in turn owns the stock of the Iroquois Natural Gas Company, which latter company supplies the natural gas to the city and its inhabitants, and that said National Fuel Gas Company is the beneficial owner of the artificial gas plant, which has purchased both the natural and artificial gas plants for the purpose of obtaining the full control of all gas supplied to Buffalo, both natural and artificial.

Allegation is also made that the 90-cent rate for gas to the municipality was fixed by this Commission in 1913, and that one of the chief factors in establishing so high a rate was the fact that there was natural gas competition, which by the recent purchase of Mr. Judge and the present beneficial ownership of both plants is wholly eliminated.

Another allegation is that the artificial coal gas plant operated by Judge is grossly inadequate, antiquated, and wasteful, and its use fails to furnish the full measure of the productivity or earning value of the franchises now held by him.

Claim is also made that a certain franchise owned by Judge, originally secured by the Queen City Gas Light Company, contains a statutory limitation upon the price to be charged thereunder, and that such price is exceeded by the new schedule.

It is further claimed that the service supply, instrumentalities and facilities, and the quality and component parts of the gas supplied are unsafe and inadequate for the consumption proposed.

All of the allegations of the complaint are formally denied,

but on the hearings Mr. Judge admitted that the National Fuel Gas Company is the beneficial owner of the artificial gas plant and property to which this proceeding relates and of which he is the legal owner. We do not conceive that this fact has any particular bearing on the question of rates, except as it may admit of the inference that the competition between the two properties will naturally be less severe.

We will therefore proceed to discuss the issues raised.

COMPLAINTS AGAINST SERVICE

Upon the hearing, evidence was produced by the city to show that poor service resulted for a considerable period in the immediate vicinity of the water gas plant. This was in the Summer and Fall of 1918. The testimony of one witness, which was typical of all the evidence, was that the flame would "pop" into the mixer: there would be a lowering of the flame and it would have to be turned down; that turning it on full she would get a limited amount of flame, which took longer to cook or boil because of the resultant inefficiency of the heat. Following such complaints the city chemist, whose routine duty it is to make frequent tests, experimented in the neighborhood in question, and found that in the morning hours the tests showed from 480 to 580 b. t. u., and in the evening some of them were as low as 482, although others exceeded the standard. This testimony was not contradicted. The standard of gas service required by the rules of the Commission is an average minimum of 585 b. t. u. The popping of the gas was apparently due to the mixing of the water gas and coal gas, causing a backfire and the flame going into the mixer, a condition which can be remedied by adjustment of the mixer, and the company was sending its employees to houses where trouble was reported to make the required adjustments. The city chemist makes daily tests of heat units, and except as to those particular tests in the limited territory there was no failure of heat units.

Another ground of complaint was that extensions of mains

had been refused on certain streets, but since that testimony was given these extensions have been ordered by the Commission and the orders have been complied with.

Such sporadic defects of service as have been thus shown are common to all public service utilities, and it is an important function of the Commission to trace them to their source and see that they are remedied, and its employees are constantly occupied with such duties. The Commission realizes fully the importance to the consumer of satisfactory service and that it is scant comfort to be assured that correction will be made. At the same time, unless the service is inherently bad, or a service generally below the standard is attempted to be supplied, or the defective service is so prolonged as to give it a chronic aspect, such complaints can not properly be considered in a rate case. Where poor service is general or inherent, the courts have justly held that the rate shall not exceed the value of the service rendered; or expressed in another way, that the poor quality of the service in general may properly be taken into consideration in making rates. But in this case the defective service was local and temporary, and we do not consider the defects to have been of such a character that they should be considered as a factor in the making of the rate.

QUEEN CITY FRANCHISE

Upon the oral argument, counsel for the city strongly insisted that by reason of the limitation of the price for gas which the Queen City Gas Light Company was permitted to charge by the provisions of the special statute [chapter 556, laws 1893] under which that company secured its right to lay mains in the city streets, Mr. Judge, as owner and operator of the franchises of the Buffalo Gas Company and of the Peoples Gas Light and Coke Company, the latter company having acquired the above mentioned franchise rights of the Queen City Company, is similarly limited.

The facts in this connection are that the Queen City Company was organized under the general laws of the State, and

by a special statute [chapter 556, laws 1893] acquired the right to lay its mains in the streets of the city under restrictions which fixed the maximum price to be charged for gas at \$1.30 gross and \$1.10 net. In 1897 this company was merged into the Peoples Gas Light and Coke Company, and that company gave a lease of all of its property to the Buffalo Gas Company, upon conditions which required the latter company to pay the cost of operation and maintenance plus certain taxes; the Buffalo Gas Company also became the owner of the bonds and stock of the Peoples Company. Following a receivership of the Buffalo Gas Company, Judge acquired the property of that company, including the securities of the Peoples Company, at foreclosure sale, and thus came into direct ownership of the property of the Buffalo Gas Company, including a franchise to lay and maintain mains in all of the city streets, and also into the ownership of the lease of the Peoples Company plant and possession of the bonds and stocks of that company. During the receivership the receivers of the Buffalo Gas Company operated the plants of both companies, that of the Peoples Company being operated under the lease, and when Mr. Judge succeeded in the ownership he continued and still continues to operate both plants under the same conditions.

The claim on the part of the city is that under this state of facts Mr. Judge is limited to the price fixed by the Queen City franchise, not only for the gas distributed through the mains which were constructed by that company but with respect to the gas distributed generally through the system.

The authority cited by the counsel (*Ches. & Ohio R. R. v. Virginia*, 94 U. S. 318) is to the effect that where a railroad corporation enjoying an exemption from certain taxation by the provisions of the special statute under which it was organized, is merged with another railroad corporation which has no such exemption, under a statute which provides that the resultant corporation shall enjoy all the privileges which were enjoyed by the merged corporations, the exemp-

tion from taxation shall apply only to the property acquired from that one of the merged corporations which previously enjoyed the exemption. If that case were applicable here at all, it would be authority only for the proposition that the limitation as to rate which was imposed by statute upon the Queen City Company must still apply to the three miles of mains which were laid by that company and acquired from it by the Peoples Company now controlled by Judge. But I think the principle referred to has no application here.

The situation is that Mr. Judge has acquired the right to operate two different franchises covering the streets in which the Queen City mains were laid, and it would seem to follow, that having two franchises in the same streets, Judge will be deemed to be operating under that which is the more favorable to him. Upon any theory, it would seem that the greater must be deemed to include the less. This same question in essence was determined in the case of *City of Vermilion v. Northwestern Telephone Exchange* (U. S. Circuit Court of Appeals, 8th Circuit), reported in 189 Federal Reporter p. 289. In that case the Northwestern Telephone Exchange had a franchise in the public streets unrestricted as to its duration, but instead of constructing its own lines thereunder, purchased the existing lines of another company which were constructed under a franchise given the other company for a restricted period, and it was sought to impose this restriction on the Northwestern Company. The court, affirming the court below, held that the Northwestern Company, having itself an unrestricted right to place wires and poles in the streets for a local exchange, may use the property freed from the restriction under which the wires were originally placed in the streets.

We must dismiss the city's contention in this behalf as being without merit.

THE COKE OVEN PROCESS

One important contention on the part of the city was that the cost of production and distribution of the company's out-

put by suitable methods would permit it to sell its product at rates much lower than those proposed; that the company owes to the public the duty to use the natural advantages which its location in the city of Buffalo gives to it, and to employ modern instrumentalities and devices to the end that great saving can be had in material and labor. With this introductory statement, the counsel proceeded to develop the argument that the method which the company shou'd adopt to lessen its cost of production was the substitution for its present manufacturing plants of what is known as the "byproduct coke oven method," or else the acquisition of a supply of such gas from concerns which conduct such plants. He argues that in every city of the United States where there is furnished to the public gas produced in byproduct coke ovens, the price thereof is upward of 50 per cent less than it is in Buffalo, and that steps should be taken to obtain such inexpensive surplus gas so that the citizens generally may benefit. One of the city's expert witnesses, through whom it elucidated this argument, was Professor Forrest of Indianapolis, who conducts the municipal byproduct coke oven plant which supplies that city with gas. Mr. Forrest, in describing the installation of that method in Indianapolis, said, "My problem was to produce gas and sell it at sixty cents and make the company live. I realized that this could not be done except by operating byproduct coke ovens. Therefore the company started with the distinct intention of operating byproduct coke ovens and depending on them for its chief source of supply".

Mr. Frank B. Baird, president of the Buffalo Union Furnace Company, an authority on the coke situation in Buffalo, was also introduced as a witness on the part of the city, and testified to the effect that quite probably the City of Buffalo could successfully follow the example of Indianapolis and establish a byproduct coke oven gas plant, and by selling the coke to the commercial trade and treating the gas as a byproduct, furnish gas to consumers at very much lower rate

than they would otherwise be obliged to pay. Of course what the city can do in this respect Mr. Judge or anyone else can do, except that obviously, if Mr. Judge should do it, he could not be expected to treat the gas as a byproduct in the sense of charging all of the operating expenses against the coke product and crediting all of the resulting profit to the gas product, as is evidently done in the Indianapolis municipal plant. Furthermore, in order to make such a plant pay, in the opinion of Mr. Baird, a very large plant would be required, very much larger than is required for a gas plant of suitable size to furnish gas alone. There would be a very large output of coke for which a constant market must be found. The investment would be very great, and the company or municipality embarking upon this important enterprise would of course be subject to the usual hazards of large business operations in the commercial world. In order to insure a continuous gas supply the plant would necessarily be required to be kept in constant operation, and if there were failure at any time to find a constant and continuing market for the coke product at satisfactory prices, difficulty would ensue because of the impossibility of storing any large quantity either of coke or of gas.

In this connection the city endeavored to establish as a fact that Buffalo, being a metallurgical center, the required market for the coke output could be found at home in the various local steel plants. It appears, however, that the owners of these steel plants prefer as far as possible to be "self-contained," in the sense that they prefer to produce their own coke, using the byproduct gas for re-heating their iron in their blast furnaces and molds; and most of the large plants in the Buffalo district are pursuing that policy. It would seem to be obvious also that if either the city or a gas company undertook the suggested enterprise and found itself compelled to manufacture and sell a large and constant supply of coke in order that the byproduct gas should be available, it would be obliged to accept such price as it could

get from time to time, because it would have no option but to continue the supply: it could not stop if the price became unsatisfactory.

The city's witness, Bloss, who is superintendent of the coke plant of the Lackawanna Steel Company, located just across the Buffalo city line, was strongly of the opinion that the gas company should build and operate a coke plant and sell the coke either in and near the city to existing steel plants, or if necessary, find a market in New England or other outside points. But on cross-examination it seemed evident that he had overestimated the possible local demand, and of course the New England market, assuming it to exist, would involve the cost of transportation thither, which on coarse commodities like coke is a very serious factor.

No doubt if the respondent Judge could purchase byproduct coke oven gas and mix it with his manufactured gas, the problem would be largely solved, provided enough could be purchased and the supply proved to be steady and reliable. Mr. Judge testified that he had endeavored, without success, to obtain such a supply, but that he hoped so to do. Mr. Baird points out in this connection that a coke company which should undertake to guarantee a constant supply of gas would necessarily be obliged to charge much more for it than for its intermittent and incidental surplus. Judge states that when he bought the Buffalo plant it was with the intention of giving Buffalo what he believed it never had had, a full, complete, and adequate service, and that he has made no change in his ideas in that respect. He stated further that he had considered the idea of erecting a byproduct coke oven plant but had formulated no plan. Mr. Baird advised against such an attempt as an economical venture for the purpose proposed, stating that in his judgment if the main object in view was to supply gas for lighting and domestic purposes the better plan would be not to attempt to produce it as a byproduct but to do so by means of a gas plant pure and simple.

I think enough has been said to indicate that it would be a questionable enterprise, economically considered, to attempt to obtain a cheap supply of gas through the operation of a coke plant installed for that purpose. To be sure, it is claimed there are instances where it has been done, still we have not yet seen the ultimate results of those undertakings. But even if such an enterprise should seem to be a wise venture, the Commission could not force Mr. Judge to adopt it. The whole subject was considered in the former rate case [No. 1894], and the Commission then disposed of it by saying —

If the coke oven theory is to be adopted by the Commission, the power of the Commission extends to forcing the company to go into the coke business as its principal business, using the gas derived therefrom as a byproduct only. New and improved process of manufacture may, under proper circumstances, be insisted upon by the Commission, but such is not the case. It is not a new and cheaper process of manufacture which is demanded, but entrance upon a new business with its attendant investment and risks.

The view then taken by the Commission is equally applicable to the present state of facts, and to it we feel impelled to adhere.

Nor do I see how the Commission can require Mr. Judge to secure a supply of coke oven gas from manufacturers of coke. It has not the power to make such an order. He says he is desirous of so doing, and it is so clearly to his interest to carry that desire into effect that compulsion would seem to be superfluous even if we had the power to apply it.

DIFFERENTIAL BETWEEN RATES FOR PUBLIC AND PRIVATE LIGHTING

Before the filing of the present tariff there existed a differential of substantially 10 per cent between the price for private lighting and that for public lighting. Mr. Judge now seeks to eliminate this differential, claiming that the costs of the two services are substantially equal. The city, on the other hand, claims that by reason of the different character of the greater part of the city service, namely the street light-

ing which dispenses with the use of meters, it is less expensive to furnish. A consideration of the testimony satisfies me that there is some saving in expense on the gas furnished the municipality, and that a slight difference should be recognized in fixing the two rates. As long as this difference is normal or slight the question is not a vital one, because the relation of each rate to the total revenue is considered in the making of both rates.

THE GAS PROPERTY AND THE RATES

The plants owned, controlled, and operated by Judge consist of the coal gas plant in Buffalo acquired by him at foreclosure sale from the Buffalo Gas Company, together with its mains and other property, and the water gas plant of the Peoples Gas Light and Coke Company. The principal gas output comes from the coal gas plant. The history of the plants is briefly as follows:

The Buffalo Gas Light Company began business in 1848 and established its coal gas plant at Genesee and Jackson streets, the present location.

The Citizens Gas Company was established in 1871 on the Court Street site and erected a coal gas plant there. In 1871 the Mutual Company was established and built a coal gas plant on Elk street. Both of these plants have since been demolished.

In 1897 the Buffalo City Gas Company was established and took over the Citizens Company, and in 1889 the Buffalo Gas Light Company and the Buffalo City Gas Company consolidated into the Buffalo Gas Company, and shortly thereafter in the same year the latter company merged the Mutual Company. In this manner the Buffalo Gas Company acquired all of the artificial gas plants in Buffalo, their properties and franchises, except the Peoples Company.

In 1893 the Queen City Gas Light Company was organized and built a small plant at the foot of Court street. In 1897 the Peoples Gas Light and Coke Company was organized, and in or about that year merged the Queen City Com-

pany and constructed a water gas plant at the corner of Bradley and Dart streets. In 1901 a lease of the property of the Peoples Company was made to the Buffalo Gas Company, which also acquired the ownership of the bonds and stock of the Peoples Company, and from that time on the Buffalo Gas Company operated both plants in connection with each other.

The financial history of these transactions has been quite fully dealt with in a former rate case which was determined in 1913 [case No. 1894], in an elaborate opinion by former chairman Stevens. Those transactions all took place before the advent of regulatory commissions. Securities were very freely issued against the properties and franchises, and it is evident that the right to manufacture and distribute artificial gas for illuminating purposes was deemed of much value, and such properties were in great demand by financial men for purposes of exploitation. Especially was the elimination of competition highly valued. The result of the operations mentioned was substantially to eliminate competition and place the Buffalo Gas Company in complete control of the field. The expense was great, however, the securities outstanding at the consummation of the transactions in question being about \$6,000,000 in bonds and \$7,000,000 in stock.

Thirteen years later, receivers for the properties were appointed in an action to foreclose the mortgage securing the bonds, resulting in a foreclosure sale at public auction in 1917, wherein Mr. Judge became the purchaser at his bid of about \$2,500,000. Mr. Judge now claims that he must increase the rates to be charged for the output nearly 50 per cent, or to \$1.45 net per M cubic feet, in order to secure sufficient revenue to yield expenses of operation, and that if he is to secure any return on his investment in the property he must be allowed a very much higher rate. A very simple computation indicates that if we accept Mr. Judge's figures for operating costs in 1918, and compute 6 per cent return on his claimed investment of \$3,000,000, a price much in excess

of \$1.45 must be allowed. The company shows that with the increased rates in operation a deficit of about \$37,000 resulted from four months' operation ended September 30, 1918. This would give us \$111,000 for twelve months. The four months in question are summer months, when the consumption is light. Assume that on the year's operations the deficit would be halved, and we get a loss of say \$55,000; add to this \$180,000 for return on investment, making a total shortage of return of \$235,000 at the \$1.45 rate. The sales in 1918 were 745,397 M cubic feet. To make up in revenue the required \$235,000 therefore calls for a further addition to the price ($\$235,000 \div 745,397,000$) of something over 30 cents per M cubic feet, which added to the net price of \$1.45 gives \$1.75. This computation is only an illustration to indicate approximately the rate which must logically result from an acceptance of Mr. Judge's demands, because although the filed rate is \$1.45, the proceeding opens up the whole question of what is a just and reasonable rate, and in his brief Mr. Judge's counsel demands that the just and reasonable rate be fixed, whether or not it exceeds the filed rate.

We thus find that Mr. Judge, in order to make a 6 per cent return on a relatively small claimed investment, if we accept his own figures, must get a net price of approximately \$1.75 per M cubic feet for his output.

If such rate be justified, we would naturally expect to find it somewhat in line with the prices charged or demanded in other communities fairly comparable with Buffalo in size and character and with respect to costs of production and distribution. Such a comparison would not be decisive of the Buffalo rate, but it naturally suggests itself and may throw light on the subject. We find the rates prevailing in the large cities elsewhere throughout the District are as follows:

Rochester, \$0.95 per M cubic feet, effective July 1, 1918.

Utica, \$1.10 per M cubic feet, less 10 cents for prompt payment, effective July 1, 1916.

Syracuse, \$0.95 per M cubic feet, effective July 1, 1918.

Albany, \$1.15 per M cubic feet, effective June 20, 1919.

Troy, \$1 per M cubic feet, effective May 1, 1916.

In some of these cities, however, it is evident that the electric operations are to a very considerable extent carrying the gas operations, although that is not true in either Rochester or Albany.

When we go outside of New York state we find the following, according to Brown's Directory for 1917:

	Gross	Net
Denver.....	\$0.95	\$0.90
Hartford, Conn.....	\$1.00 to 0.85	0.90 to 0.75
Atlanta, Ga.....	1.10 to 0.80	—10% discount
Springfield, Ill.....	1.20	1.00
Baltimore, Md.....	0.85	0.75
Springfield, Mass.....	1.00	0.85
(Outlying districts higher rate)		
Minneapolis.....	0.92	0.77
St. Louis.....	0.85	0.75
Omaha, Neb.....	1.10	1.00
Cleveland, Ohio.....	0.85	0.80
Portland, Ore.....	1.00	0.95
Pittsburgh, Penna.....	1.20	1.00
Toledo.....	{ Light 1.10	0.95
	{ Fuel 0.87	0.70
Milwaukee, Wis. (monthly increment rate).....	0.75 max.	0.45 min.
Toronto.....	1.00	0.70

Doubtless some of these prices have since been increased.

These points have been selected, not with a view to making an unfavorable showing for the Buffalo price, but with the idea of including all cities of the country of reasonably comparable size for the purpose of a general comparison.

A conspicuous feature of this comparison is the showing of the neighboring city of Rochester with a smaller population. An investigation of the comparative costs of production and distribution of the Buffalo and Rochester companies, as taken from their official reports, discloses the following:

Comparative Gas Costs per M cu.ft., Buffalo and Rochester, 1918

	Buffalo, cents	Rochester, cents
Production expenses.....	\$110.15	\$69.25
Less residuals produced.....	\$55.88	\$50.87
Net production expenses or "cost in holder".....	\$54.27	\$18.38
Transmission and distribution expenses.....	\$32.40	\$4.65
Municipal street lighting expenses.....	\$3.16	.....
Commercial expenses.....	\$5.29	\$5.58
General and miscellaneous expenses.....	\$17.86	\$13.61
Total operating expenses.....	\$120.59	\$58.08

¹ Per M cu.ft. produced at new coal gas plant.

² Per M cu.ft. all gas, coal or water, sold in Rochester.

³ Per M cu.ft. produced at coal gas plant.

⁴ Per M cu.ft. all gas, coal or water, sold by Wm. J. Judge (Buffalo Gas Co.).

The Rochester plant, like that in Buffalo, is a coal gas plant, with an auxiliary water gas plant, but the former is a new and modern plant with railroad connections. It will be noted that the Rochester coal gas plant produces gas at a "cost in holder" of 18.38 cents per M cubic feet, against 54.27 cents for the same item in the Buffalo coal gas plant, a difference of about 36 cents; while in expense of transmission and distribution there is an excess in the Buffalo plant over Rochester of about 28 cents. Taking the whole table, we find gas at the burner apparently costing at least 100 per cent more in Buffalo than in Rochester; and in cents, 62.41 per M.

The costs of gas coal in Buffalo and Rochester are respectively \$4.36 and \$4.97 as reported for the year 1918, a difference of 14 per cent in favor of Buffalo. It is thus apparent that if Buffalo could produce and distribute its gas as cheaply as Rochester, the problem of price would be substantially solved.

The Rochester plant is of the latest design and the business of the company much larger than that of the Buffalo plant, there being no natural gas sold in Rochester. The comparison is of value only as indicating what can be done in the gas business in a neighboring city with a modern plant which is free from natural gas competition.

All of the comparisons indicate that Mr. Judge is demanding a price far in excess of prices prevailing generally in the first and second class cities. We must look for the explanation of this apparent discrepancy, and will gain some light from a further consideration of the history of the Buffalo plant.

HISTORY AND CONDITION OF THE BUFFALO GAS PROPERTY AS BEARING UPON ITS OPERATING COSTS

We have seen how within the short period of thirteen years the illuminating gas plants of Buffalo, from being an apparently profitable and highly desirable property capitalized at about \$13,000,000, passed into the hands of receivers

and were sold at foreclosure for \$2,500,000. The first serious cause of this disaster may be located when we consider that we have no reason to believe that the properties are worth substantially more than they have cost Mr. Judge. In fact, this cost checks very closely with the valuation which was put on the property by the Commission in the former rate case in 1913. When we reflect that the company was paying interest on bonds approximating twice this value, and also endeavoring to make a return on a large volume of stock over and above the bonds, we have quickly found one of the important contributions to its dissolution. Another cause of probably equal importance was the ruinous competition into which the company was thrown with electric light and natural gas. Buffalo, located close to Niagara Falls, has a relatively low priced supply of electric energy for lighting purposes. I say "relatively" because complaint is occasionally made by the inhabitants that the price should be lower than it is; but whether or not these complaints are well founded, the fact is, that as compared with other cities of similar size and less favorably situated with regard to hydraulic power, the electric rates in Buffalo are low; and the superior convenience of electric light for illuminating purposes is so quickly discovered by users that even without regard to difference in price it is a very successful competitor with illuminating gas.

But a more deadly competitor in this particular case was the company which began to supply natural gas to the inhabitants of Buffalo primarily for fuel purposes. This supply was introduced about the year 1888, and while the franchise granted to the natural gas company by the city in terms prohibits the use of natural gas for illuminating purposes, there has been no legal method of preventing the customer once having introduced the pipes into his house to make such use of the gas as he sees fit. This gas is sold at about 30 cents per M cubic feet, and when used with the Welsbach burner provides a satisfactory illuminant. The supply of this gas

has extended to nearly all parts of the city, and at the present time the natural gas company has upward of 80,000 consumers in Buffalo as compared with about 19,000 supplied by the Judge plant. In this interval Buffalo has nearly doubled in population, which has now reached about 500,000. The natural gas pipes have been laid alongside the mains of the illuminating gas company, and have not only taken away a very large part of the business which it formerly enjoyed but has prevented any substantial increase of its business. This is readily illustrated by the fact shown in the evidence that upward of 16,000 customers formerly supplied by the illuminating gas company have discontinued its service. The service connections between the main and the curb in such cases, which were installed at the expense of the illuminating gas company, are thereby rendered an unproductive asset. It thus appears that nearly half of the service connections of the Judge plant are out of commission and that its customers are only about one-quarter in number those of the natural gas company. Had this competition not been introduced, it is obvious that in addition to its existing 19,000 customers the Judge plant would now have a very large proportion of the 80,000 customers of the natural gas plant. In streets where the illuminating gas pipes are parallel to those of the natural gas company, it is found that a comparatively small number of consumers per mile are reached. This condition is general throughout the city. It follows that the cost of distribution per thousand cubic feet is thus greatly increased over what it would be in the absence of this competition. This fact alone must account for a very large percentage of the discrepancy between the Buffalo cost and the Rochester cost of transportation and distribution.

CONDITION OF THE BUFFALO COAL GAS PLANT

Neither of the difficulties above discussed enters in the slightest degree, however, into "cost in holder" of the gas manufactured by the Buffalo coal gas plant. This cost has no relation whatever to investment, nor to distribution or

consumption. It is purely and simply the cost of getting the gas into the holder and ready for distribution. It is seen that this production expense is 54.27 cents per M against 18.38 cents per M in the coal gas plant in Rochester, notwithstanding the additional fact that the cost of coal which supplies these plants is only \$4.36 per ton in Buffalo as against \$4.97 per ton in Rochester. Obviously this discrepancy must be accounted for either by the character of the plant or by a difference in efficiency of management, or both. There are apparently no other factors which enter into the comparison.

Examining the Buffalo plant we find that it was constructed in 1848. The coal is placed in the retorts by hand in iron wheelbarrows or buggies. These are small four-wheel cars propelled by two men. It is shoveled into the retorts by hand; and after the process of dissolution is completed, the blazing coke is raked out of the retorts by hand into iron buggies or vehicles operated by one man, who wheels the blazing coke into the next room and extinguishes it by throwing pails of water on it. Mr. Judge's gas engineer, Mr. H. C. Palmer, described this plant and its operation on the stand. He stated that the benches are what is known as half-depth benches, that there are 44 such benches with 6 retorts to each bench, and that the retorts are 10 feet deep, with a section, generally speaking, 16 x 26 inches back to back; the charge for a retort varies from 350 to 390 pounds. After describing the plant, Mr. Palmer was asked —

Q. Do you know of any other city at all the size of Buffalo that has a plant where this is so?

A. No, I do not.

Q. The products in other plants are handled mechanically, aren't they?

A. Generally speaking, yes.

The expert witness, Forrest, stated that the plant was manifestly not a modern plant, even as an ordinary retort plant, for the manufacture of coal gas. He continued —

That it ought to be scrapped I would not say, because it might be well worth while to keep it as a reserve, just as you keep a water gas

plant as a reserve. If you were obtaining the major part of your gas supply from coke ovens or as natural gas, it might still be worth while to retain the plant. . . . If I were operating the company, I think I would keep that plant not only because it is absolutely necessary for the present, but I would keep it for some time in the future as a reserve. I would not want to operate it except perhaps during the winter months to take care of the peak.

Q. You would not plan to operate that plant permanently at all times?

A. I should not want to if I could get any other way to produce gas.

It appears that in the more modern plants the retorts run through and are mechanically operated, and it is common knowledge that the modern practice is, with respect to all bulky commodities, to save the cost of men handling and re-handling by having them dump direct from the freight car into the hopper, retort, or other container. What the excessive expense of operation in this coal gas plant, as compared with a modern plant like the Rochester plant, amounts to in cents per M cubic feet, does not specifically appear except by the comparison which I have made, but obviously it must be a very large and vital item. We have Mr. Palmer's admission that he knows of no other plant in the country which is equally obsolete in its style and methods of handling with the Buffalo plant. Counsel for Mr. Judge emphasizes the testimony of the witness Forrest, that "with the present equipment and costs" he did not consider the price of \$1.45 to be unreasonable. But this answer clearly begs the question.

It thus appears that the coal gas plant is admittedly antiquated, out of date, and inadequate, and its former owners, having been ruined by the prolonged and severe competition of low priced natural gas and electricity, allowed their plant to be sold at auction to the natural gas interests rather than make a further struggle in competition with them.

Mr. Judge virtually admits that the coal gas plant as now operated is inadequate and obsolescent, and that even at the increased rates the system will yield no sufficient return on investment. In other words, it is not economically sound but must be vitally changed in its structure and commercial

operation before it will become so. To be specific, in order to make the plant commercially desirable he must either construct a coke oven plant from which to obtain an output of gas at a low price, or he must arrange for a supply of such gas from others; or the common owner of the natural and artificial gas plants, the National Fuel Gas Company, must combine the two plants with a view to furnishing a mixed gas containing the required heat qualities which will sell at a price which will command business; or a modern coal gas furnace must be constructed with up to date railroad facilities to take the place of the present one. Mr. Judge, representing his principals, bought the plant fully realizing that some such radical step must be taken, and states that he has considered them all but has arrived at no solution. He has apparently proceeded in the utmost good faith, and unquestionably the war conditions have made it impossible for him to have financed any new arrangement had he been ready to proceed with a new plan. His difficulties have been greatly increased also by the effect of the war conditions upon the prices of labor, materials, and supplies required in operation. The present conditions, therefore, are that Mr. Judge is considering what is best to be done in order to develop and utilize his investment, with no definite plan at hand. In the meantime, he has increased his rates for gas on the theory, as advanced by his counsel, that he is entitled to a fair rate of return upon the value of the property in its present condition. The actual cost to him of the property corresponds very closely to what was found to be its fair value by the Commission in 1913 in the former rate proceeding. It is unnecessary in this proceeding to spend time or study on that question, and for present purposes we can dispose of it by assuming the value to be approximately \$3,000,000, which checks very closely with the former finding of the Commission, and also with the cash price paid by Judge for the property after adding thereto certain incidental expenditures and additions made by him. If Judge were

conducting a gas plant reasonably equipped for its purpose, he would be entitled to a return upon approximately the amount named, plus a reasonable sum required for operating expenses, which it is fair to estimate at \$200,000, or approximately one-sixth of the gross revenues. But, as stated by Chairman Stevens in the former rate case,—

It is clear that the public should be required to pay a return only upon a plant which is suited and adapted to its needs, with, of course, a reasonable allowance for future expansion and growth which is just as important for the public as it is for the company; and if a given plant is not suited and adapted to the needs of the public which it serves . . . then clearly and upon the plainest principles of equity and justice the company should not be entitled to a return beyond that which would be demanded upon a plant properly located, economically constructed, and suited in capacity to the needs for which it is designed.

The principle thus enunciated is well supported by authority. It must nevertheless be applied with care and restraint, because it is easy to conceive of cases where great injustice might result. A utility can not be expected frequently to consign its plant to the scrap-heap in order to keep up with the latest improvements. It is perhaps sufficient to say that the rule must be applied with reference to the facts peculiar to the given case.

It may be said that the determination in the former case commits the Commission to finding at this time that the plant is suitable, because that was the effect of the former determination. But since that time six years have elapsed, and the company which then conducted the plant with what seemed like possibilities of success has been overtaken by bankruptcy and obliged to succumb to the accumulated difficulties which surrounded it, and the present owner frankly admits that the plant can not continue on an economically sound basis as now conducted. The concern is now passing through a period in which it is awaiting the adoption of plans for its radical improvement which will make it economically sound. We are dealing with that period. The question presented is whether or not, under these conditions, and during such

period, the owners of the plant are entitled to a return on their investment with the same effect as though it were a concern whose plant was properly located, economically constructed, and suited to carry on the business for which it was designed, with reasonable economy and with the use of fairly modern methods.

PRESENT REVENUES AND OPERATING EXPENSES

The respondent introduced statements of its operations for various periods. Since the submission of the case, however, we have available the official report of the operations of the property for the calendar year 1918. The contents of this report fairly represent the claims of the respondent as to results of his current operations upon which he bases his claims for a higher rate.

The official reports of operations for the last five years condensed are as follows:

BUFFALO GAS COMPANY, REVENUES AND EXPENSES, CONDENSED

	1914	1915	1916	1917	1918
Gas manufactured, total.....	M cu.ft. 669,993	M cu.ft. 687,309	M cu.ft. 718,438	M cu.ft. 793,666	M cu.ft. 843,642
<i>Gas sold:</i>					
Municipal street lighting.....	129,991	131,867	134,155	131,768	129,430
Municipal building lighting.....	34,545	33,398	31,503	31,251	28,920
Private consumers.....	496,181	412,549	449,378	532,508	558,004
Total sales.....	594,717	577,814	615,036	696,523	744,354
<i>Revenues:</i>					
Municipal sales.....	Dollars 142,686	Dollars 151,655	Dollars 151,800	Dollars 148,879	Dollars 192,103
Private consumers.....	426,338	422,484	459,839	537,447	757,356
Miscellaneous byproducts, etc. ¹	231,402	210,299	238,929	246,675	243,043
Total gas revenues.....	800,446	784,438	850,568	933,001	1,192,507
<i>Expenses:</i>					
Works superintendence and labor.....	115,401	112,770	152,091	214,983	261,310
Roller fuel.....	6,400	6,061	7,506	16,854	42,853
Water.....	933	815	1,016	2,423	3,647
Fuel under retorts.....	31,293	28,988	31,261	33,357	69,420
Coal carbonized.....	156,017	175,430	186,182	278,537	267,047
Coal gas enricher.....	7,787	1,053	...	...	...
Generator fuel.....	...	132	2,105	13,476	48,586
Water gas oil.....	...	132	4,204	38,047	79,095
Purification supplies.....	1,820	1,787	1,893	2,064	2,067
Miscellaneous works expense.....	3,333	2,407	2,849	4,208	6,199
Repairs works and station structures.....	2,340	6,303	3,819	6,208	18,109
Repairs power plant equipment.....	5,246	1,116	3,704	2,435	7,407
Repairs gas apparatus.....	5,662	4,246	12,983	13,983	20,215
Repairs works tools.....	3,573	3,632	2,701	3,189	2,887
Gas storage.....	12,772	11,527	11,820	12,777	15,871
Residuals produced, Cr.....	178,548	175,398	182,567	175,793	338,788
Total production expenses.....	207,032	181,107	231,463	460,866	517,544

¹ Commission's addition, 745,397, includes 1043 M cu.ft. sold in Cheektowaga.

BUFFALO GAS COMPANY, REVENUES AND EXPENSES, CONDENSED (concluded.)

	1914	1915	1916	1917	1918
	Dollars	Dollars	Dollars	Dollars	Dollars
Distribution superintendence, supplies, and expenses	18,248	19,181	19,616	20,831	23,202
Work on meters and consumers' premises	16,989	14,091	15,669	17,914	20,499
Repairs gas mains and services	56,502	49,345	32,713	33,472	182,784
Repairs gas meters, tools, and appliances	12,224	14,583	13,537	13,477	15,070
Total transmission and distribution expenses	108,933	97,200	81,515	85,694	241,515
Total municipal street lighting expenses	6,898	4,140	3,949	6,720	23,519
Total commercial expenses	31,257	32,507	33,536	37,456	39,402
General administration	32,187	36,929	37,239	29,838	33,373
General stationery and printing	588	549	673	1,740	1,164
Store and stable expenses	10,205	11,073	11,855	14,047	22,239
Insurance and injuries	7,602	11,960	11,630	14,706	23,567
Cost of manufacturing residuals sold	139,497	137,733	149,432	124,953	230,583
Residuals and byproducts expenses	31,614	35,691	50,535	33,136	59,869
Miscellaneous adjustments, &c.	976	1,552	2,207	4,469	7,869
General amortization	15,943	15,825	19,587	33,473	70,513
Total general and miscellaneous expenses	236,124	248,526	277,911	265,697	363,917
Total operating expenses	585,244	563,479	628,374	856,431	1,185,809
Taxes	69,603	69,943	81,844	73,345	72,987
Uncollectible bills	1,333	920	1,765	91	2,609
Total revenue deductions	655,180	634,343	710,983	929,867	1,261,402
Income from gas operations	145,267	150,090	139,575	3,144	168,985

* Deficit.

A study of the operations during this five year period indicates that practically all costs are higher than those of other larger manufactured gas plants. In addition to its coal gas plant, a water gas plant is leased from the Peoples Gas Light and Coke Company, all the securities of which are held as investments by Mr. Judge, who acquired them along with the other properties of the Buffalo Gas Company.

PRODUCTION EXPENSES

The quantities of coal gas and water gas manufactured during the past five years are shown in the following statement, together with the average production cost of each:

Year	Quantities of coal gas	Production cost per M cu.ft.	Quantities of water gas	Production cost per M cu.ft.
		<i>Cents</i>		<i>Cents</i>
1914	699,993	29.55		
1915	686,108	26.29	1,141	59.82
1916	691,949	32.08	26,485	35.87
1917	642,584	55.93	151,082	54.40
1918	583,761	54.27	259,881	77.24

The total cost of materials entering into gas manufacture during 1918, without considering credit for residuals, develop an average cost per M cubic feet of 60.5 cents, while similar items for the Rochester Railway and Light Company develop 53.6 cents.

The item "Works superintendence and labor" appears to be particularly high, it having increased from \$115,401 in 1914, to \$261,310 in 1918. A comparison with other companies results in the following statement:

Company	1914 per M cu.ft.	1918 per M cu.ft.	Per cent increase
	<i>Cents</i>	<i>Cents</i>	
Rochester Ry. and Light.....	4.79	6.66	39.04
Utica Gas and Electric.....	3.44	4.78	39.95
Syracuse Lighting.....	6.54	4.02	23.24
Municipal Gas, Albany.....	4.08	5.19	27.21
Troy Gas.....	3.53	4.71	33.42
Buffalo Gas.....	16.48	30.97	67.92

¹ Decrease.

It would seem that an increase of 40 per cent over the 1914 charges would be a fair basis for estimating a reason-

able charge for a current year, particularly in view of the fact that the cost in 1914 was about two and one-half times that of the company with the next lower charge under this caption.

TRANSMISSION AND DISTRIBUTION EXPENSES

While no very great reduction may be justified in the charge for "Work on meters and consumers' premises," the following comparison of per meter cost may be of interest.

Rochester Railway and Light.....	44 cents
Utica Gas and Electric.....	46 cents
Syracuse Lighting.....	66 cents
Municipal Gas, Albany.....	98 cents
Troy Gas.....	59 cents
Buffalo Gas.....	\$1.03

The Buffalo property includes 449 miles of mains, with 19,706 consumers' meters in service, or an average of only 44 consumers per mile of main. The following statement shows maintenance cost per mile of main, and indicates that the expenditure of the Buffalo Gas Company for the year 1918 represents for the most part deferred charges. It would seem that \$100 per mile would be a very fair allowance.

Year	Rochester Ry. & L.	Utica Gas & El.	Syracuse Lighting	Municipal Gas, Albany	Troy Gas	Buffalo Gas
1914	\$38	\$61	\$106	\$144	\$48	\$132
1915	35	47	114	149	37	111
1916	23	47	76	85	31	75
1917	36	46	90	148	22	76
1918	43	57	107	187	22	407

GENERAL AND MISCELLANEOUS EXPENSES

During the five year period a very considerable increase appears under "Insurance and injuries". This appears due largely to costs incidental to the Workmen's Compensation Act, although comparison with other companies indicates that for the number of employees the charges are relatively high.

It appears that under the present ownership a new rate for amortization has been adopted of 9½ cents per M cubic feet. This resulted in a charge to operating expenses during 1918 of an amount approximating about 2.36 per cent on a

capitalization of \$3,000,000. While this has resulted in more than twice the charge in 1917, and more than four times the charge in 1914, there is no doubt that the amortization reserves charged in previous years were much too low. We think this item should be allowed.

In the light of these figures and criticisms we estimate that with a price of \$1.25 net per M cubic feet for private lighting, and \$1.20 for municipal lighting, operations for a current year, based upon the consumption of 1918, and also upon what we consider to be fair allowances for operating expenses and other revenue deductions, would show the following results. The estimated operating expenses are the company's actual figures for 1918, except for changes in certain items which we have considered and criticised.

*Estimated Revenues, Operating Expenses, Revenue Deductions, and Income at
Rates Stated.*

<i>Revenues:</i>	
Municipal lighting, 156,300 M cu.ft. @ \$1.20 net.....	\$187,620
Private lighting, 588,004 M cu.ft. @ \$1.25 net.....	735,005
3 per cent estimated for penalties.....	22,050
Residuals.....	243,048
Total.....	\$1,187,723
<i>Expenses:</i>	
<i>Production:</i>	
Works superintendence and labor.....	\$161,561
Boiler fuel.....	42,883
Water.....	3,647
Fuel under retorts.....	69,420
Coal carbonized.....	267,047
Generator fuel.....	48,586
Water gas oil.....	75,956
Purification supplies.....	3,037
Miscellaneous works expense.....	9,867
Repairs works and station structures.....	18,199
Repairs power plant equipment.....	7,407
Repairs gas apparatus.....	20,255
Repairs works tools.....	2,857
Gas storage.....	15,871
	\$746,593
Less residuals produced, Cr.....	328,798
Total production expenses.....	\$417,795
<i>Transmission and distribution:</i>	
District superintendence supplies and expenses.....	\$23,202
Work on meters and consumers' premises.....	20,459
Repairs gas mains and services.....	44,900
Repairs gas meters, tools, and apparatus.....	15,070
Total transmission and distribution expenses.....	\$103,631
Total municipal street lighting expenses.....	\$23,519
Total commercial expense.....	\$39,402

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General and miscellaneous expenses:	
General administration.....	\$33,378
General stationery and printing.....	1,164
Store and stable expenses.....	22,249
Insurance and injuries.....	25,557
Cost of manufacturing residuals sold.....	230,193
Residuals and byproducts expenses.....	56,859
General amortisation.....	70,813
	<hr/>
Less miscellaneous adjustments, Cr.....	\$440,212
	76,295
	<hr/>
Total general and miscellaneous expenses.....	\$363,917
	<hr/>
Total operating expenses.....	\$948,264
Taxes.....	72,987
Uncollectible bills.....	2,609
	<hr/>
Total revenue deductions.....	\$1,023,860
	<hr/>
Assumed revenues.....	\$1,187,723
Assumed deductions.....	1,023,860
	<hr/>
Income.....	\$163,863

It seems fair to assume that the consumption will not decrease. Some evidence was given tending to show that the trend of consumption was downward, but it appears that the consumption has increased between 1914 and 1918 nearly 30 per cent, and that the natural gas competition has passed its height.

There may be some increases in taxes and uncollectible accounts over 1918, but on the other hand some other classes of expense, such as gas oil, and iron and steel supplies, should show a reduction by reason of the lower prices now prevailing for those items.

The net income thus estimated will yield a return of 5.12 per cent on \$3,200,000.

WHAT WILL BE A JUST AND REASONABLE RATE?

Under the state of facts disclosed, I do not believe that either the amount of Mr. Judge's investment or the fair value of the property used in the public service is necessarily the measure by which we must determine a just and reasonable rate. I believe the public is entitled to be served by a reasonably modern plant which is not obsolete or wasteful in its methods, and which turns out its product with some reasonable degree of economy. The competition and financial exploitation from which also this property has suffered are

not the fault of the public but are the misfortunes of the owners. The public does not guarantee public utility properties against such commercial difficulties.

But a just and reasonable price must be determined. We think that under the circumstances such price must be arrived at by finding a commercial price—what the traffic will bear—having also a close relation to what would be an approximately fair return on the investment in a reasonably modern plant conducted with a fair degree of efficiency. I think that in arriving at such a rate we can be guided also to some extent by rates prevailing in other communities of comparable size and location.

Commissions and courts alike have held that a rate for utility services must be fair alike to the utility and to the public; but above all, the rate should not exceed the value of the service rendered regardless of losses which are to be suffered by a utility which may inadvisedly have installed a plant under and amidst adverse conditions. (*In re Heisen, Illinois P. S. Commission*, P. U. R. 1917-B, p. 646.)

In *Salisbury v. Salisbury L. H. & P. Co.*, P. U. R. 1918-E, page 336, the Commission said —

It may well be, as is not infrequently the case, the individual rates which would have to be charged in order to yield a given percentage of return upon the fair value of the property would be higher than the actual worth of the service to the consumer, judged by some extrinsic standard entirely independent of the actual cost of rendering the service as a whole; for illustration, this Commission in several instances has found cases where the actual cost of rendering a given service to the individual was so great when compared with the degree of accommodation afforded him, or when compared with rates charged for the same commodity by other utilities operating under similar conditions, that we have been obliged to declare such charges unreasonable in themselves and thereby hold that the actual cost of rendering the service was not the only or final test of the fair worth thereof.

I believe the principles thus enunciated are peculiarly applicable to this case. By allowing the rates indicated, namely \$1.25 net per M cubic feet for private and \$1.20 for public lighting, Mr. Judge will secure a moderate return on

his investment while he is engaged in determining what method to pursue to convert his purchase into a property which is economically sound, and which will give to the City of Buffalo, to use Mr. Judge's own language, "what it has never had, a full, complete, and adequate gas service".

An order will be entered in appropriate form fixing the rates as above indicated, to remain in effect for a period of one year, and thereafter until the further order of the Commission.

All concur.

Petition of INTERNATIONAL RAILWAY COMPANY under section 184, Railroad Law, for approval of a declaration of abandonment of a portion of its constructed route in the city of Lockport. [Case No. 6885.]

Decided August 5, 1919.

Appearances:

Cohn, Chormann & Franchot (by Edward F. Franchot), Gluck Building, Niagara Falls, for the applicant.

William A. Gold, Corporation Counsel, for the City of Lockport.

William J. Gold as Mayor of the City of Lockport; *John M. Hoenig*, *William B. LeValley*, and *John Finn* as Aldermen of the City of Lockport.

George W. Riley, Lockport, representing Board of Commerce of Lockport.

HILL, Chairman:

This is an application under section 184, Railroad Law, praying that the Commission approve a declaration of abandonment of that portion of the constructed route of the petitioner beginning at a point in the center line of Grand street at its intersection with the easterly line of Lock street, said point being also at easterly limits of the pavement on Grand street, thence easterly on approximately the center of Grand street 180 feet to the p. c. of a 75 foot radius curve; thence curving to the left into Gooding street a distance of approximately 105 feet; thence northerly on Gooding street about 3243 feet to the point where the said tracks intersect the easterly line of Gooding street and pass upon the private property of International Railway Company, said point being north of the crossing of the present Gulf line and present track on Gooding street; also including that portion of track lying outside of the limits of Gooding street and

across the property of Magnus Dahlstein, this latter distance being approximately 110 feet in length.

The portion of the route to be abandoned is single track, a little less than three-fourths of a mile in length, and lies within the city of Lockport.

Petitioner operates a trolley system comprising several hundred miles, practically monopolizing the business in Erie and Niagara counties. In about 1898, when the system was organized by the combination of various existing properties, a road or branch was built from Lockport to Olcott, on the shore of Lake Ontario, a distance of twelve miles, with a view to creating there a recreation point with the expectation that a large excursion and recreation business from Buffalo, Niagara Falls, the Tonawandas, Lockport, and other points to the east would result; and the piece of track proposed to be abandoned was built to make an additional connection at Lockport between the other lines entering that city and the new branch to facilitate the expected traffic.

The so called Lockport and Olcott division was built of heavy double track, and a hotel and recreation grounds were created on the lake shore at Olcott, and the whole plan was on a scale which contemplated a large and profitable business of the character indicated. The track proposed to be abandoned is not the only track, however, which connects the Lockport terminal with the double track road to Olcott. As will be seen from the accompanying map, there is another connection. The cars from Buffalo, Niagara Falls, and the Tonawandas reach Lockport over what was the Buffalo and Lockport Electric railway, at a terminal located at Main and Transit streets, and these cars can reach the line for Olcott either over Main, Hawley, Grand, and Gooding streets (the Gooding Street track being the principal part proposed to be abandoned), or over another existing route farther to the east in East Main, Market, and Mill streets.

As the Olcott cars are now operated, they use the last named route on the northward journey and the Gooding Street route on the return trip. After the abandonment

it is proposed to use the first named route in both directions, and the evidence shows that the one is no longer than the other either in mileage or in time of operation.

The expectations of the railroad company with respect to the volume of the excursion and recreation traffic from the cities on its line other than Lockport were never realized. The Lockport and Olcott branch has never been a financial success, and its statement for the year ended February 28, 1919, being the latest available at the time of the hearing, showed operating expenses, not including renewals and replacements or depreciation, for both freight and passenger business, of \$123,869.04, as against revenues of \$103,257. This branch is bonded for \$800,000 at 5 per cent, and assuming the bonded debt to represent the entire cost of the property, we thus have a deficit, after paying \$40,000 interest on the bonds, amounting to upward of \$60,000 for the year. Criticism was made of some of the items entering into this calculation, but even if we concede the justness of all of such criticisms the general result is not substantially changed.

In the recent rate case determined by the Commission on the petition of International Railway Company (case No. 6480), the local fare in the city of Lockport was increased from five to six cents; and it appeared in that case that the Lockport local lines had never earned any return on investment, and even with the increased fare there was no such return in sight. Recently the rates on the Lockport and Olcott line have been considerably increased by the filing of a new tariff, but it does not seem probable that even with the increases mentioned either of these properties will become self-sustaining.

The evidence satisfies me that all of the through business which is done on Gooding street can be equally well done via the alternative route mentioned, which we will call the Market Street route, and there would seem to be no room to claim that the Gooding Street track is longer necessary for the successful operation of petitioner's road.

The only question requiring discussion, therefore, is whether or not the track in question is longer necessary for the convenience of the public.

The Gooding Street track, like all other railroad trackage which is under operation, wherever located, naturally is of convenience to a certain number of patrons. This track is used not only for the through business between the Lockport terminal and Olcott Beach, but also caters to certain local traffic, some local cars being operated over it in connection with the Hawley and Grand Streets track and the Market Street belt line in addition to the through cars to and from Olcott. So far as the through passengers are concerned, they are, of course, indifferent about the particular route through Lockport so long as there is no loss of time; so that the only question to be considered is whether or not the local service over the Gooding Street track is of such volume and character as to call upon the Commission to withhold its approval of the abandonment.

This local traffic is divided between belt line cars which operate hourly north on Hawley, Grand, and Gooding streets, through Mill Street junction, and southeast and south on Mill and Market streets to the corner of Main and Market streets in the central part of the city; and secondly, to traffic local to the Gooding Street district, made up of passengers who board and alight from the cars therein. A census of the traffic was taken covering the period of a week, from which it appeared that the average number of passengers of the latter description served was 2.12 per car, and an analysis of the separate trips covered by the count discloses 103 trips on which no local passengers either embarked or disembarked at points upon this track. This section is not thickly populated, and it will be noticed that it is within easy walking distance of the center of the city. So far as the belt line passengers are concerned, I can not see that the public will be discommoded, for the reason that the company proposes to accommodate them by putting on a new schedule of car operation by transferring from the Hawley Street cars to

all other cars at the corner of Main and Locust streets, with a more frequent service than they now receive.

The small number of passengers covered by the estimate of 2.12 per car, who are local to the district and who get on and off the cars on Gooding street, will be somewhat discommoded by being compelled to walk from their homes either to the Hawley Street line or the Market Street line. But there is a peculiar topography in this section, Gooding street being on a steep grade of 5 per cent, passengers to the west being required to walk down a sharp grade to board the cars on Gooding street, whereas with a walk not exceeding five minutes on level ground they can reach the Hawley Street cars; and the ground east of Gooding street slopes sharply down to a ravine and has a negligible population, Scovell and Jackson streets being mere paper streets not actually laid out on the ground. The territory between the north end of Gooding street and Mill street is a factory district, the Gulf line being used wholly for freight traffic which will reach it over the connection shown on the map.

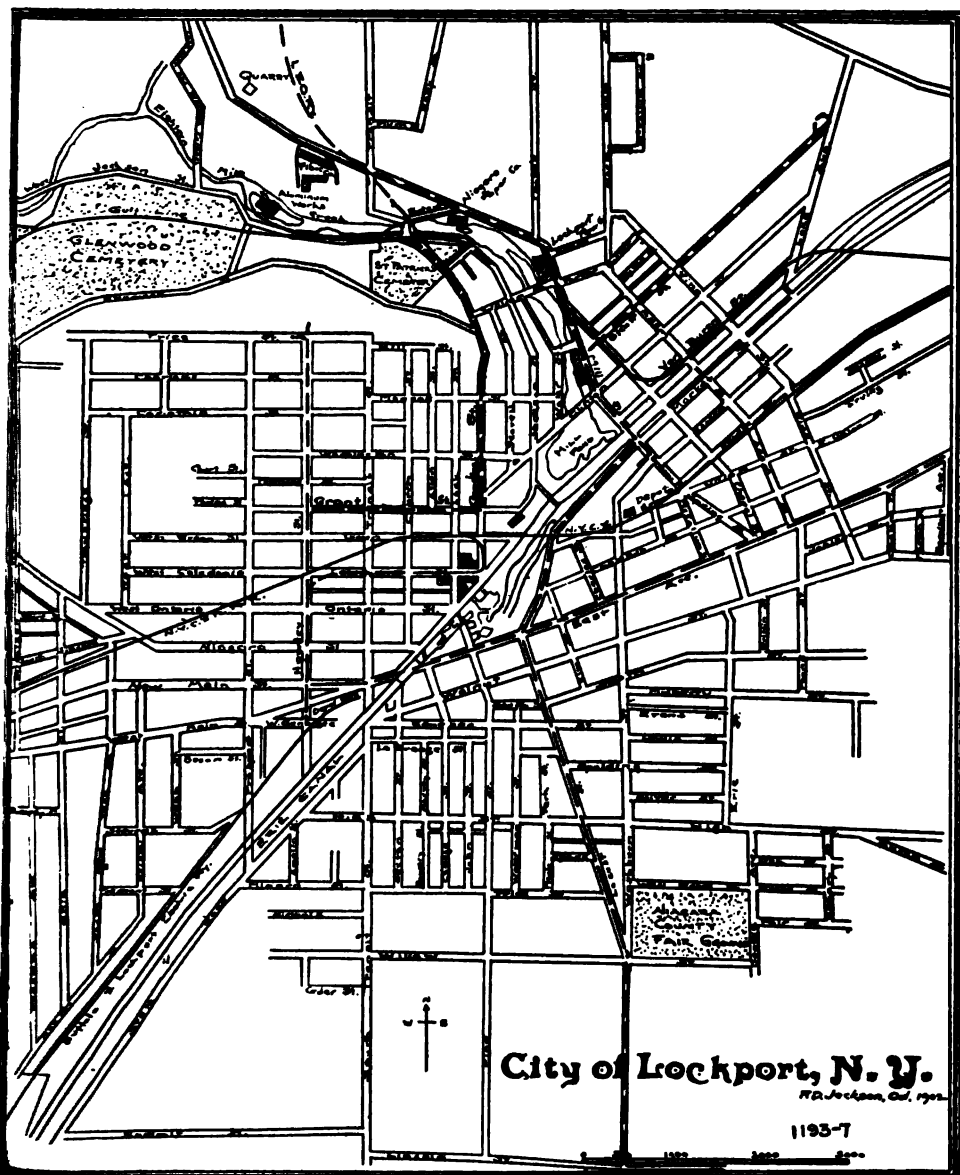
The immediate occasion of the abandonment is the proposal by the city to put a new pavement in Gooding street, and in Grand street for one short block, which will require the company to pave its area in those streets. There was some dispute as to the cost which this would entail upon the company, but it is sufficient to say that it is not disputed that such cost would be at least \$25,000. Of course, when the improvement is made the company will also be called upon practically to re-lay its tracks in a very substantial manner.

Upon the facts shown I think it can not be claimed within the meaning of the statute that the operation of the track in question is longer necessary for the convenience of the public. As above intimated, every section of track wherever located, which is operated at all, is probably convenient for some number of patrons; but as stated by the Commission in the Yonkers case [No. 6684], public convenience can not be predicated upon a public patronage which fails to

give reasonable financial support to the operation of the road. Of course there may be circumstances under which abandonment of an unprofitable segment or branch of railroad would not be justified purely on the ground that the particular piece of track was not self-supporting, and there are undoubtedly factors other than that of financial support of the particular track proposed to be abandoned which might prove to be controlling in a particular case. But where, as in this case, the ensuing inconvenience to patrons is so slight, and it is proved that operation not only of the track in question, but of both the Lockport local lines and the Lockport and Olcott branch of the main system in connection with which this track is operated, are unprofitable, we think a clear case has been made out and that the approval of the Commission should not be withheld.

For the reasons stated, an order will be entered, in appropriate form, approving of the declaration of abandonment of the portion of the road in question.

All concur.



In the Matter of the Complaints of SUMMER RESIDENTS AT EAST HAMPTON, L. I., *against* EAST HAMPTON ELECTRIC LIGHT COMPANY as to service charge. Also Complaint of the company, in its answer, asking that present rates for electricity be approved. [Case No. 6820.]

A utility company has a monopoly of its franchise territory for the purpose of serving a public need. That need is only properly served when the public is required to pay the lowest rate compatible with a reasonable return on the least expensive production and delivery of electric energy.

A generation of practically two kw.h. for every one kw.h. actually earned and paid for indicates an uneconomic generation of power. Such a utility company owes a duty to the public to purchase power if possible instead of manufacturing same.

"Consumer cost" which means expense required by consumers irrespective of amount used, "Demand cost" which means expense involved by reason of the rate at which current is used under maximum demand, and "Output cost" which means a cost of furnishing the current used after the other costs have been made, analyzed and allocated.

Decided August 12, 1919.

Appearances:

John Drew, Dr. F. K. Hollister, A. P. Hinton, E. S. Avery, S. A. Gregory, all of East Hampton, L. I., for complainants.

Pratt & McAlpin (by T. W. Sprague), 120 Broadway, New York city, as attorneys for respondent.

FENNELL, Commissioner:

This case grows out of a protest by summer residents of East Hampton against certain rates contained in a schedule filed by East Hampton Electric Light Company. There are two distinct classes of service at East Hampton, the "annual" and the "summer". The latter service, as shown by the attached diagram, is almost entirely included within the months of June, July, August, and September.

The old schedule provided for a minimum charge of \$1 per month and 25 cents per kilowatt hour. Under the new schedule "summer season" customers pay a 12 months' service charge of \$2.50 per month for twenty lamps or less, plus \$1 per month for each additional twenty lamps or fraction thereof, plus a kilowatt hour charge of 25 cents. The service charge is not absorbed in the current consumption charge. The "all-the-year-'round" customers pay a \$1 minimum charge which is absorbed in the monthly bill plus a kilowatt hour charge of 18 cents.

The company claims that to save unsightly poles and wires a large amount of underground construction was installed; that the high short time summer peak load requires a large amount of plant which lies idle eight months of the year and that therefore the summer residents are not unjustly discriminated against in the rates as filed.

The summer homes in this locality are usually quite large and the installations run to sixty or more outlets in a house. One summer resident testified that he had sixty-one outlets in his house; that he was charged \$2.50 for the first twenty, \$1 each for the next three groups of twenty plus \$1 more for the single lamp that entered the next group of twenty; that as the house was used for only four summer months this made a monthly service charge of \$16.50 for the months the lights were actually used. The summer residents did not object to the 25 cents per kilowatt hour consumption charge but complained that both together made an unjust discrimination in favor of the annual consumers.

The conditions at East Hampton are so unusual that a special investigation has been made of the company's plant, books, and all available records and a study made of the general electric lighting situation at East Hampton.

The property seems to have been constructed economically and well, and it certainly is efficiently operated. However, East Hampton is a small place with a scattered population; the underground construction required by the franchise is necessarily expensive, and above all the load factor is very

low and with no apparent chance of increasing it. There is very little power business to be had so that at best there is little load, except for a few hours during the day. To make matters worse the load for a few summer months is greatly in excess of that for the rest of the year; therefore a comparatively large plant has to be provided and kept in operation throughout the year with all the attending losses, including those of distribution transformers of sufficient number and size to handle the maximum requirements of all the consumers, whereas the total amount of current actually used is relatively small. The fact that it requires the generation of practically two kilowatt hours for every one kilowatt hour actually delivered and paid for indicates one serious defect. Under such circumstances the operation of independent steam plant is not an economical generation of power. Opportunity should be sought by this company to connect up with some large electrical distributing company that has a low generating cost. An electric utility company owes a duty not only to produce energy for a reasonable return, but if its production costs require a rate to the public that is higher than a rate based on purchased power, it should make arrangements to purchase instead of manufacture. The company has a monopoly of and in its franchise territory, but that very monopoly is granted to meet and serve a public need. That need is only properly served when the public is required to pay the lowest rate compatible with a reasonable return on the least expensive production and delivery of electric energy.

In analyzing the local situation it develops that there is a fundamental and essential difference between the annual consumers and the summer consumers. The difference in the manner of consumption is shown by the attached diagram, from which it will be seen that the summer consumers use more current during two or three months than do the annual ones, but because their consumption does not continue their total for the year, is little more than half that of the annual consumers. Needless to say, most of the

expenses involved in order to serve the summer consumers do not abate during their absence. The difference between these two classes goes even farther. The annual consumers are mostly located close together in a small area nearby the power station; summer consumers are far apart and scattered over a large area extending up and down the beach. While it is recognized that there will be individual exceptions to every generalization, the broad differences between these two classes are so marked that it seems necessary to handle them separately.

In the attached schedules there is shown an analysis of this company's business and its costs, in which the attempt is made to distribute all costs to their proper sources and to analyze them as between the different elements of "consumer cost," which means the expense required by consumers irrespective of what they use; "demand cost," which means the expense involved by reason of the rate at which current is used under maximum demand; and "output cost," which means the cost of furnishing the current used after the other costs have been met.

The year 1918 was abnormal. Whereas the daylight saving law is still in force, war conditions have passed, normal growth will probably be resumed, and it would therefore be unfair to base any study on 1918 conditions. In schedule 1 is shown the sales for five years, and the "estimated normal sales" used as a basis for calculation.

The lost and unaccounted for current has been allocated to the different classes of business and an estimate made of the peak demand of each class; schedule 2 shows the resultant general data which is used in subsequent calculations.

Inasmuch as we have assumed an increase over the 1918 sales, we must also increase the operating expenses to care for the additional current which must be generated. Theoretically the increase would be confined to fuel and supplies, but as wages in this plant are very low now and will probably have to be increased, it has been assumed that they will

go up in proportion to other items. Schedule 3 shows the calculation of operating expenses.

Schedules 4 and 5 show the distribution and allocation of operating expenses. In making these schedules street lighting, while technically one consumer has been assumed equivalent in some cases to ten consumers, and in others to one hundred consumers, for the purpose of properly allocating the "consumer" expenses.

The investment of this company is all a matter of actual record, which has been carefully checked heretofore by the Commission, and there are no questionable items and nothing of an intangible nature. In the calculation of fixed charges in schedule 6 we have therefore used the company's book figures. Working capital has been taken as the sum of the company's cash, accounts receivable, and materials and supplies. As the cash was only \$814.57 this can hardly be questioned. For the purpose of these calculations the return on investment has been taken as 8 per cent without any intent to determine this as the proper figures, and for any other per cent desired the calculations can be modified accordingly. Amortization is taken at the rates recommended for this company by the Commission, and which it has been and is using. The percentage for taxes was selected such as to produce the amount of taxes actually paid in 1918.

In schedules 7 and 8 the fixed charges are distributed and allocated.

Uncollectible bills have been considered as a "consumer" cost and have been distributed to the three classes of commercial business in proportion to revenue. This distribution is carried into the summary of all costs given in schedule 9.

Schedule 10 shows the summary of cost by classes of business, and schedule 11 shows a grand summary of all costs.

Schedule 12 contains the final and most important figures, namely, a comparison between the distributed costs and the revenue actually received. Because 1918 sales were below

normal, the comparison has been made on cents per kw.h. To translate this into dollars, if the rates prevailing in 1918 had been applied to the assumed normal consumption, the revenue would have been \$32,260, as against the cost (including return on investment) of \$40,791.07. It requires practically \$30,000 to pay operating expenses, taxes, and amortization without any return whatever on investment. It will be seen that the 1918 rates were considerably below cost both for annual and summer business.

In schedule 13 there are worked out the theoretically correct rates for both summer and annual business. It will be noted that the theoretical rate for summer lighting is not markedly different from the rate now complained of, except in the kw.h. charge. The charge of 25 cents per kw.h. in the present rate seems to be unwarrantedly high. Whereas the rate for summer consumers ought in reason to be materially increased, the present rate for this class will bring in upward of \$9000 more than the former one, which is considerably more than the cost figures justify.

In schedule 14 are shown suggested rates which will bring in about the amount of money which the cost analysis requires. Needless to say infinite varieties may be worked out, which would accomplish the same result, and the proper construction of a rate is largely governed by commercial considerations. These seem to be fairly simple and workable, and it is thought that they will probably produce the necessary revenue with as little disturbance as any.

The company's rate schedules refer to "lamps". It should be understood, however, that "lamp" does not mean an electric lamp, but as used means 25 watts of installed capacity. This use is very confusing and ought to be dropped. In the suggested rates, instead of "20 lamps" there has been substituted "500 watts," and instead of making the subsequent charge follow on blocks of "20 lamps," it has been arranged to increase with each 25 watts so that the change in the rate with increased installation will be more uniform.

From the following schedules it will be seen that the complaint of the summer residents can be fairly treated only in connection with the rates to annual consumers. The former having a much larger amount of plant and demand requirements, in proportion to consumption of energy, should be charged accordingly. But it seems only fair that having the service charges so fixed the kilowatt hour charge should be equal to both classes. By reducing slightly the theoretical service charge and increasing the theoretical kilowatt hour charge (as shown in schedule 13), a rate results that, while it does not make a very large reduction in the service charge, lowers the kilowatt hour charge 44 per cent.

No complaint has been made against the rate to annual consumers. It would seem that this class should not be favored by having the service charge absorbed in the consumption charge. It should be treated on the same basis. However, as this class buys current the whole year 'round and thus gives the company a chance to do business and earn money on its plant during the whole twelve months, the service charge might well be less. By lowering the theoretical service charge slightly and increasing the theoretical kilowatt hour charge somewhat (as shown in schedule 13), this class of service would bear its just proportion of plant and demand costs and would also obtain a reduction in the kilowatt hour rate. The rate to annual consumers not having been made an issue in this case, no change in this rate will be ordered herein as the annual consumers have not had their day in court. The fixing of that rate can be done after some future hearing.

An order should be made fixing the rate for summer lighting at \$30 per year for 500 watts (twenty lamps) or less, plus 75 cents per year for each additional 25 watts (lamp), plus 14 cents a kilowatt hour for all current used.

It is expected that the respondent company will make early and diligent effort to obtain cheaper electric energy.

Commissioners Irvine and Kellogg concur; Chairman Hill and Commissioner Barhite not present.

INDEX OF SCHEDULES

1. Kilowatt Hours Sold.
2. Data Used.
3. Operating Expenses.
4. Distribution of Operating Expenses to Groups.
5. Allocation of Operating Expenses to Classes.
6. Calculation of Fixed Charges.
7. Distribution of Fixed Charges to Groups.
8. Allocation of Fixed Charges to Classes.
9. Summary of Costs.
10. Summaries by Classes.
11. Grand Cost Summary.
12. Comparison of Cost and Revenue.
13. Theoretical Rates.
14. Suggested Rates.

Schedule 1: Kilowatt Hours Sold.

	1914	1915	1916	1917	1918	Estimated normal sales
Municipal street lighting.	29,786	36,883	35,194	36,000	37,000	37,000
Commercial lighting . . .	88,676	106,476	119,893	118,383	99,833	120,000
Commercial metered power	14,853	19,295	21,831	25,952	28,066	28,000
Total kw h. sold	133,315	162,654	176,918	180,335	164,999	185,000

Schedule 2: Data Used.

	Number of consumers	Kw. demand	Kilowatt hours	
			Generated for	Sold to
Street lighting	1	10	40,000	37,000
Annual lighting	254	85	144,000	75,000
Summer lighting	180	95	115,000	45,000
Power	16	10	36,000	28,000
Totals	451	200	335,000	185,000

Schedule 3: Operating Expenses.

	1918	Estimated normal
Kilowatt hours generated	292,520	335,000
Station superintendence and labor	\$3,742.60	\$4,290.00
Fuel	10,444.93	11,960.00
Supplies	1,300.48	1,490.00
Repairs	1,929.57	2,210.00
Total production	\$17,417.58	\$19,950.00
Total distribution	1,634.88	1,634.88
Total utilization	581.74	581.74
Total commercial	1,259.54	1,259.54
Total general ¹	1,938.76	1,938.76
Total operating expenses (exclusive of amortization)	\$22,832.50	\$25,364.92

¹As reported, but with amortization omitted and a reduction for miscellaneous revenue of \$689.05.

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Schedule 4: Distribution of Operating Expenses to Groups.

	Total	Cost group		
		Consumer	Demand	Output
Production:				
Superintendence and labor....	\$4,290.00	.....	\$4,290.00	.....
Fuel.....	11,980.00	.....	.....	\$11,980.00
Supplies.....	1,490.00	.....	745.00	745.00
Repairs.....	2,210.00	.....	1,660.00	550.00
Distribution.....	1,634.88	\$1,634.88	.....	.....
Utilisation.....	581.74	581.74	.....	.....
Commercial.....	1,259.54	1,259.54	.....	.....
General.....	1,938.76	1,138.76	800.00	.....
Totals.....	\$25,364.92	\$4,614.92	\$7,495.00	\$13,255.00

Schedule 5: Allocation of Operating Expenses to Classes.

	Total	Street lighting	Annual lighting	Summer lighting	Power
Distribution.....	\$1,634.88	\$297.38	\$755.00	\$535.00	\$47.50
Utilisation.....	581.74	581.74	.....	.....	.....
Commercial.....	1,259.54	52.00	1,323.00	940.00	83.30
General.....	1,138.76				
Consumer cost.....	\$4,614.92	\$931.12	\$2,078.00	\$1,475.00	\$130.80
Demand cost.....	7,495.00	375.00	3,185.00	3,560.00	375.00
Output cost.....	13,255.00	1,590.00	5,700.00	4,550.00	1,425.00
Totals.....	\$25,364.92	\$2,896.12	\$10,963.00	\$9,585.00	\$1,930.80

Schedule 6: Calculation of Fixed Charges.

	Investment Dec. 31, 1918	Per cent				Fixed charges
		Return	Amortisation	Taxes	Total	
Land.....	\$2,125.00	8	.....	.9	8.9	\$189.12
Buildings.....	17,137.72	8	.....	.9	10.9	1,868.01
Apparatus.....	34,577.27	8	4	.9	12.9	4,460.46
Conduits.....	16,175.83	8	1.5	.9	10.4	1,682.28
Dist. system.....	30,814.68	8	1.5	.9	10.4	3,204.72
Transformers.....	12,589.95	8	4	.9	12.9	1,624.10
Meters.....	6,589.41	8	4	.9	12.9	816.33
Street lighting system.....	4,304.23	8	3	.9	11.9	512.20
General and lab. equip.....	545.98	8	10	.9	18.9	103.19
Working capital.....	10,412.88	8	.....	.....	8	833.03
Totals.....	\$134,972.95					\$15,288.44

Schedule 7: Distribution of Fixed Charges to Groups.

	Total	Cost group		
		Consumer	Demand	Output
Land.....	\$189.12	.....	\$189.12	.....
Buildings.....	1,868.01	.....	1,868.01	.....
Apparatus.....	4,460.46	.....	4,460.46	.....
Conduits.....	1,682.28	\$1,682.28	.....	.....
Dist. system.....	3,204.72	2,204.72	1,000.00	.....
Transformers.....	1,624.10	500.00	1,124.10	.....
Meters.....	811.33	511.33	300.00	.....
Street lighting system.....	512.20	512.20	.....	.....
General and lab. equip.....	103.19	53.19	50.00	.....
Working capital.....	833.03	200.00	.....	\$633.03
Totals.....	\$15,288.44	\$5,663.72	\$8,991.60	\$633.03

Schedule 8: Allocation of Fixed Charges to Classes.

	Total	Street lighting	Annual lighting	Summer lighting	Power
Consumers cost:					
Conduits.....	\$1,682.28	\$467.00	\$300.00	\$841.00	\$74.28
Distributing system.....	2,204.72	.....	543.00	1,526.00	135.72
Transformers.....	500.00	.....	282.00	200.00	18.00
Meters.....	511.33	.....	288.60	204.60	18.23
Street lighting.....	512.20	512.20	.....	.....	.....
General and lab.....	53.19	1.15	29.40	20.80	1.84
Working capital.....	200.00	36.35	92.40	65.45	5.80
Consumers cost.....	\$5,663.72	\$1,016.70	\$1,535.40	\$2,857.75	\$253.87
Demand cost.....	8,991.69	450.00	3,821.69	4,270.00	450.00
Output cost.....	633.03	75.53	272.00	217.50	68.00
Totals.....	\$15,288.44	\$1,542.23	\$5,629.09	\$7,345.25	\$771.87

Schedule 9: Summary of Costs.

	Total	Operating expenses	Fixed charges	Uncollectible bills
Street lighting.....	\$4,428.35	\$2,886.12	\$1,542.23	.....
Annual lighting.....	16,658.50	10,963.00	5,629.09	\$66.41
Summer lighting.....	16,988.95	9,585.00	7,345.25	58.70
Power.....	2,715.27	1,930.80	771.87	12.60
Totals.....	\$40,791.07	\$25,364.92	\$15,288.44	\$137.71

Schedule 10: Summaries by Classes.

Street Lighting				
	Total	Cost group		
		Consumer	Demand	Output
Operating expenses.....	\$2,886.12	\$931.12	\$375.00	\$1,580.00
Fixed charges.....	1,542.23	1,016.70	450.00	75.53
Totals.....	\$4,428.35	\$1,947.82	\$825.00	\$1,655.53
Annual Lighting				
Operating expenses.....	\$10,963.00	\$2,078.00	\$3,185.00	\$5,700.00
Fixed charges.....	5,629.09	1,535.40	3,821.69	272.00
Uncollectible bills.....	66.41	66.41	.....	.....
Totals.....	\$16,658.50	\$3,679.81	\$7,006.69	\$5,972.00
Summer Lighting				
Operating expenses.....	\$9,585.00	\$1,475.00	\$3,560.00	\$4,550.00
Fixed charges.....	7,343.25	2,857.75	4,270.00	217.50
Uncollectible bills.....	58.70	58.70	.....	.....
Totals.....	\$16,988.95	\$4,391.45	\$7,830.00	\$4,767.50
Power				
Operating expenses.....	\$1,930.80	\$130.80	\$375.00	\$1,425.00
Fixed charges.....	771.87	253.87	450.00	68.00
Uncollectible bills.....	12.60	12.60
Totals.....	\$2,715.27	\$397.27	\$825.00	\$1,493.00

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Schedule 11: Grand Cost Summary.

	Total	Cost group		
		Consumer	Demand	Output
Street lighting.....	\$4,428.35	\$1,947.82	\$825.00	\$1,655.53
Annual lighting.....	16,658.50	3,679.81	7,006.69	5,972.00
Summer lighting.....	16,988.95	4,391.45	7,830.00	4,767.50
Power.....	2,715.27	397.27	825.00	1,493.00
Totals.....	\$40,791.07	\$10,416.35	\$16,486.69	\$13,888.03

Schedule 12: Comparison of Cost and Revenue.

	Consumption per kw.h.	Cost		1918 revenue per kw.h.
		Total	Per kw.h.	
		Dollars	Cents	Cents
Street lighting.....	37,000	4,428.35	12.0	13.0
Annual lighting.....	75,000	16,658.50	22.2	16.9
Summer lighting.....	45,000	16,988.95	37.8	28.7
Power.....	28,000	2,715.27	9.7	7.5
Totals.....	185,000	40,791.07	22.0	16.9

Schedule 13: Theoretical Rates.

Summer Lighting: Number of consumers, 180; number of "lamps"*, 10,550; kilowatt hours used, 45,000.

Consumer cost: $\frac{4391.45}{180 \times 12} = \2.04 per month per consumer.

Demand cost: $\frac{7830.00 \times 20}{10550 \times 12} = \1.23 per month per 20 "lamps".

Kw.h. cost: $\frac{4767.50}{45,000} = \0.106 per kw.h.

Theoretical rate should be —

Consumer charge, 2.04 plus $\frac{1.23}{2} = \$2.66$ per month for 20 "lamps" or less, plus \$1.23 per month for each additional 20 "lamps" or fraction thereof.
Consumption charge, \$0.106 per kw.h.

Annual Lighting: Number of consumers, 254; number of "lamps"*, 10,650; kilowatt hours used, 75,000.

Consumer cost: $\frac{3679.81}{254 \times 12} = \1.20 per month per consumer.

Demand cost: $\frac{7006.69 \times 20}{10650 \times 12} = \1.10 per month per 20 "lamps".

Kw.h. cost: $\frac{5972.00}{75000} = \0.08 per kw.h.

Theoretical rate should be —

Consumer charge, 1.20 plus $\frac{1.10}{2} = \$1.75$ per month for 20 "lamps" or less, plus \$1.10 per month for each additional 20 "lamps" or fraction thereof.
Consumption charge, \$0.08 per kw.h.

* "Lamp" means 25 watts of installed capacity.

Schedule 14: Suggested Rates.

Summer Lighting: \$30 per year for 500 watts or less, plus \$0.75 per year for each additional 25 watts, plus \$0.14 per kw.h. for all current used.

Estimated revenue:

180 x 30.00 =	\$5,400
(10550 — (180 x 20)) x .75 =	5,210
45,000 x .14 =	6,300

\$16,910

Against theoretically proper revenue of..... \$16,988.95

Annual Lighting: \$1 per month for 500 watts or less, plus \$0.03 per month for each additional 25 watts, plus \$0.14 per kw.h. for all current used.

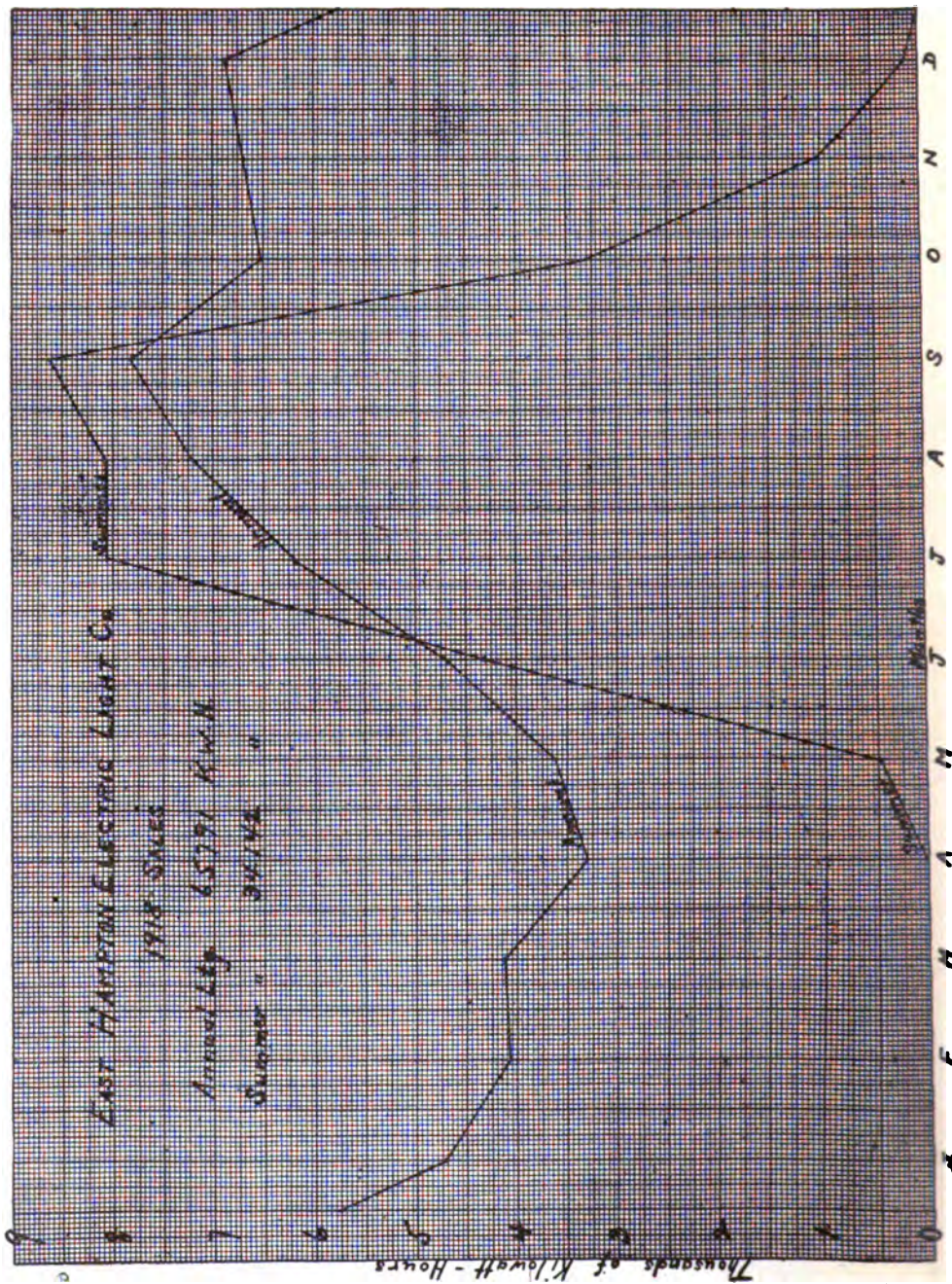
Estimated revenue:

254 x 1.00 x 12 =	\$3,050
(10650 — (254 x 15*)) x .03 x 12 =	2,460
75,000 x .14 =	10,500

\$16,010

Against theoretically proper revenue of..... \$16,658.50

* Assumed an average of 15 lamps in the first block.



Petition of the INCORPORATED VILLAGE OF SCHENEVUS, Otsego county, under section 68, Public Service Commissions Law, and section 244, Village Law, for a certificate of authority and permission and approval to build, maintain, and operate an electric plant for other than municipal purposes, as well as municipal purposes, in said village and in the town of Maryland, Otsego county, and exercise franchises from the Town of Maryland. [Case No. 6836.]

1. An electrical corporation unable or unwilling to furnish adequate service is not entitled to the protection of its monopoly in the field served, but a certificate of authority will not be granted to a municipality to establish an electric plant to compete with such a corporation, where the municipality has made no careful estimate of construction costs and no estimate whatsoever of operating revenue and expenses, and the general information in possession of the Commission indicates that the maintenance and operation of the plant would necessarily be at a great loss.

2. An electrical corporation operated with one generating plant in two villages, both small. One village sought a certificate of authority to install a municipal plant for commercial purposes. This would inevitably lead to an entire abandonment of the service in the other village. *Held*, that this is a circumstance to be considered by this Commission, representing the entire public, in passing upon the application of the first village.

Decided August 12, 1919.

Appearances:

James P. Friery, Schenevus, as attorney for applicant.

Robert Shearman as President of the Village of Schenevus.

John H. Wild as President, and *S. R. Cantwell* as Secretary, of Schenevus Business Men's Association.

N. P. Willis, Cooperstown, as attorney for Southern New York Power Company.

Lee D. VanWoert, 159 Main street, Oneonta, as attorney, and *Owen C. Becker*, Oneonta, of counsel, for Great Bear Light and Power Company.

William F. Shupe, East Orange, as Treasurer and General Manager of Great Bear Light and Power Company.

Bert Grantier, Esperance, as President of Schoharie Valley Electric Light and Power Corporation.

IRVINE, Commissioner:

The Village of Schenevus asks for a certificate of authority to build, maintain, and operate an electric plant for other than municipal purposes. Schenevus, according to the state census of 1915, had a population of 537. There has been little change in the population in the past twenty years. What tendency appears is downward rather than upward. The village has been for some years supplied with electricity by the Great Bear Light and Power Company. This company generates its current at East Worcester, about ten miles distant. It supplies East Worcester as well as Schenevus, and formerly supplied the village of Richmondville, but the Richmondville distribution system was sold to the village. The Village of Schenevus proposes to erect an entirely new distributing system and to build a transmission line about ten miles long through the town of Maryland, to the town line between the towns of Maryland and Milford, where it will receive power from the Southern New York Power Company and pay therefor four and one-half cents per kw.h.

On the hearing the evidence was almost entirely directed to proving bad service on the part of the Great Bear Company, together with certain suspensions of service, one of which lasting for several months was certainly entirely unwarranted. According to the familiar rules governing in such cases, it was made quite clearly to appear that the Great Bear Company being unable or unwilling to furnish adequate service is not entitled to the protection of its monopoly in this field. No negotiations have been had with the Great Bear Company with a view to buying its system. It is quite evident that the feeling against the company has been so high in the village that there is no great desire to protect the existing plant.

The evidence as to the cost and prospective earning power

of the proposed new plant is exceedingly meager. It consists of the testimony of one witness who qualifies merely by stating that he is general foreman on construction of an electric construction or supply company, and that he had twice made a general survey of the village, once in an automobile and once on foot, and that in his opinion the cost of the system would be about \$22,000. The village, relying on this estimate, has voted bonds to that amount. It is proposed practically to duplicate the existing system with about six additional poles. It is not expected materially to increase the number of consumers beyond those who are at present patrons of the Great Bear Company, seventy-four in number. In a village of that size no great increase in the number of consumers would be possible. No detailed study of construction costs has been made and no study at all apparently of operating costs. The Commission has, therefore, been thrown on its own resources to determine the economic features of the case. The following table has been worked out by the experts of the Commission based on their experience and data in possession of the Commission.

Sales to 74 consumers at 180.....	13,320 kw. hrs.
Used by 50 25-watt street lamps burning 4000 hours..	3,000 kw. hrs.
Total current used.....	16,320 kw. hrs.
Lost in lines and transformers, 40%.....	10,880 kw. hrs.
Current to be purchased.....	27,200 kw. hrs.
Interest, depreciation, and taxes, 10% on \$22,000.....	\$2,200.00
Current, 27,200 kw.hrs. at 4 cents.....	1,088.00
Labor	720.00
Maintenance materials	250.00
Street lamp renewals.....	150.00
Miscellaneous and general expenses.....	50.00
Total cost	\$4,458.00
Deduct for 50 street lamps at \$20.....	1,000.00
Leaving for cost to be paid by commercial consumers.....	\$3,458.00
Current used by commercial consumers, 13,320 kw.hrs.	
Cost per kilowatt hour, 26 cents.	

It is quite evident that twenty-six cents per kw.h. in such a community is a prohibitive price. If sold for less, the deficit would have to be concealed in an increased burden of taxation. In determining to plunge into this adventure without any real consideration of construction costs and

without any consideration at all of operating costs, it is evident that the village was swayed by its temper rather than by its judgment. The Commission is therefore called on to protect the village against itself. Public convenience and necessity do not require a village to embark on a disastrous business enterprise.

Furthermore, there appeared on the hearing representatives of the Village of East Worcester, who complained that if the Village of Schenevus were permitted to install its plant, East Worcester, which is even a smaller community, would be entirely deprived of electric service, as it is manifest that the Great Bear Company could not subsist on the patronage of East Worcester alone. Indeed, it barely subsists on the patronage of the two villages. Of course the Village of Schenevus is under no obligation to protect the Village of East Worcester, but it is proper for this Commission, representing the entire public, to bear this feature in mind. The application should be denied.

Commissioners Fennell and Kellogg concur; Chairman Hill and Commissioner Barhite not present.

In the Matter of the Complaint of CHARLES M. MARK and FREDERICK MARK relative to conditions, service, and operation on the Rhinecliff division of the CENTRAL NEW ENGLAND RAILWAY COMPANY. Petition of UNITED STATES RAILROAD ADMINISTRATION, CENTRAL NEW ENGLAND RAILWAY, to discontinue Cokertown station. [Case No. 2802.]

An attempt to meet varying station agency requirements and conditions by a general standardization not permitted, in a given case, to deprive the public of reasonably necessary service unless the standard fits the particular case.

Decided August 12, 1919.

Appearances:

Stoddard & Mark (by Henry A. Mark), 135 Broadway, New York city, for complainants.

W. L. Barnett, Grand Central Terminal, New York city, for respondent.

W. S. Kallman, Grand Central Terminal, New York city, for The New York Central Railroad Company.

FENNELL, Commissioner:

Petition of United States Railroad Administration, Central New England Railway, that case No. 2802 be reopened, and under section 54 of the Railroad Law for consent to the discontinuance of the freight and passenger station on said railway at Cokertown, a hamlet on the Rhinecliff division, which is not a postoffice, in the town of Red Hook, Dutchess county. The next station east of Cokertown is Elizaville, 2.03 miles away; the next station west is Red Hook, 4.08 miles distant.

Case No. 2802 was a complaint against the Central New England Railway Company in respect to various matters, particularly as to there not being an agent at said station.

A hearing was had, and thereafter the company employed an agent, put in a telephone, and an express office was opened, which satisfied complainants, and the case was closed by order dated March 6, 1912.

The following is paragraph 9 of the petition herein:

NINTH: That on account of the small amount of business at Cokertown and the revenue resulting therefrom, which business has been constantly decreasing for a long time, petitioner desires to discontinue the maintenance and operation of the station at that point; that a recent investigation shows that the revenue collected at this station for the period of six months from July to December, 1918, amounted to \$376.82, whereas the expenses during the same period were \$698.88, creating a loss of \$322.06. That the discontinuance of this station, if authorized by this honorable Commission, will result in a considerable saving to petitioner and without detriment to the public service.

The testimony, on the hearing, disclosed the following amount of business for the year 1918:

Amount of freight charges for freight received and forwarded..	\$4,563.51
Passenger ticket sales.....	130.78
Total	<u>\$4,694.29</u>
The total expense for agent's salary for this period was.....	\$1,867.79

The above does not include express business which for the year 1918 amounted to \$211.62.

This discrepancy can be explained in part by the company's treatment of the business of the station. The theory of crediting the actual cash turned in by the agent as representing the business of the station and then allocating that business to lines by length of haul does not give a correct statement of the business or a proper measure of the public convenience and necessity which the station meets. The railroad in question is operated by the United States Railroad Administration, and the entire receipts for shipment originating or ending at Cokertown go to the same treasury. The fact that freight is prepaid should not take away from Cokertown the credit for the business.

It also appears from the evidence, that on account of the more favorable highway conditions, milk shipments in that section are handled at Cokertown during the winter months and at an adjacent station during the summer time on

account of better icing facilities. The shipment of the apple crop in the fall requires the services of an agent whom the railroad expects to provide at that time for a period of about three months.

The apple shipments commence about October and continue through December; the milk shipments begin during January and continue through April. The milk cans are loaded directly into a milk car which is part of a train run and treated as a fast freight, and there is no agent in the car.

It would seem that there ought to be an agent at this station at least during apple and milk shipping seasons.

The increase in station expense is just one more example of the problem of maintaining agents at small stations. In the latter part of 1917 the agent's salary was \$54 a month. Various wage increases were made. In December, 1918, he received \$161.07. On being asked about it, the agent replied, "Well, that is some of those general orders and supplements to the general orders that they have been giving out. It is hard work to keep track of what you are getting." This unusual amount was produced by an increase to 48 cents an hour for eight hours, 72 cents an hour for additional four hours each day and back pay added. Shortly afterward the agent was reduced to an eight hour day at 48 cents an hour.

George W. Clark, Assistant Superintendent, having testified that it was not necessary to have a telegraph operator at Cokertown, was asked the following questions:

Q. Then wouldn't it be possible, in view of a volume of business there, approximating \$5000 or better a year, under the admitted figures here, wouldn't it be possible to dispense with the services of the present agent as a telegraph operator there and replace him with a man that was sufficiently versed in railroading to bill freight and sell tickets? Couldn't a man be put there for less expense and furnish the public with that convenience and keep a warm waiting room for the traveling public in the winter?

A. No sir, not for any less expense. Those prices are fixed by the Government, the Railroad Administration.

Q. And it would not be possible to put a man there that was not a telegraph operator?

A. Yes, it would, but it would cost the same amount of money so far as cost is concerned, whether he is a telegraph operator or not.

Q. Why do you tell me that? How do you know?

A. By the orders that have been issued by the Railroad Administration and the salaries having been fixed by them.

An attempt to meet varying conditions by a general standardization should not be permitted, in a given case, to deprive the public of reasonably necessary service, unless the standard actually fits the particular case. It would seem that the company has not made a case for discontinuance during the months October to April inclusive. The permission to discontinue should be denied as to those months.

On the hearing counsel for the company amended the petition and asked that the station be discontinued as an "agency" station.

As to the months May to September inclusive, the company may, if it desires, discontinue services of a station agent at Cokertown provided that the station is kept open, lighted, and cleaned, and looked after in such manner as may be necessary for public convenience.

Commissioners Irvine and Kellogg concur; Chairman Hill and Commissioner Barhite not present.

Petition of HENRY RAY VANHOESEN, by W. B. Butler, under the Transportation Corporations Law for a certificate of public convenience and necessity for the operation of a stage route by auto buses in the cities of Albany and Rensselaer, it being proposed that the route shall also be operated to the incorporated village of Kinderhook, Columbia county. [Case No. 6939.]

Application is made for a certificate of public convenience and necessity for the operation of a bus line between a city and communities already connected by an electric railroad.

The company operating the electric railroad is in such financial condition that any competition resulting in a diminution of its revenue will be likely to destroy its ability to continue operations.

The proposed bus line would compete as to its through passengers and local passengers in certain instances with the railroad, and thus deprive it of needed revenue. As to other portions of its route its divergence from the railroad is too great to create competition.

Held, that a certificate of public convenience and necessity should be issued, permitting only the carriage of passengers to and from non-competing points.

Decided August 26, 1919.

Appearances:

Walter B. Butler, Albany, for the petitioner.

Henry Ray VanHoesen, the Petitioner, in person.

Porter Austin, Kinderhook, in person.

L. C. Stallman, Niverville, in person.

Randall J. LeBoeuf, Albany, as attorney for the Albany Southern Railroad Company, in opposition.

Newton R. Cass, Albany, as attorney for the United Traction Company.

KELLOGG, Commissioner:

The proposed stage route for which a certificate of public convenience and necessity is applied for in this proceeding runs southeasterly from the Plaza in Albany to the village

of Kinderhook. The northerly portion of this route lies within the cities of Albany and Rensselaer, each of which municipalities has granted to the petitioner the statutory consent, and he now comes before this Commission for a certificate of public convenience and necessity which it alone can issue.

So far as it traverses the cities in question, it is paralleled by the United Traction Company, which objects to the carrying of any local passengers, a privilege not contended for by the applicant.

The controversy here is between the applicant and the Albany Southern Railroad Company, which objects to the issuing to the petitioner of any certificate whatsoever.

This Railroad company operates from the city of Albany to Hudson, in a general southerly direction, and in its route passes through the villages of Valatie and Kinderhook, adjacent municipalities. It is the only carrier connecting these municipalities with the main routes of travel, and as a consequence its earnings from traffic originating and terminating therein form a very substantial portion of its business. The affairs of this Railroad company have been under careful examination of late by this Commission, in the proceeding entitled "In the Matter of a Schedule of Passenger Fares Filed by Albany Southern Railroad Company with this Commission July 5, 1918, and complaint in reference thereto". [Case No. 6588.] In that proceeding the schedule of passenger fares filed by the Railroad company was challenged by certain residents of Nassau and vicinity, and as a result a very careful examination of the affairs of the Railroad company was made by this Commission, in order to determine the propriety of increasing the fares upon the line as requested by the company.

The facts in regard to the company and its exceedingly precarious financial situation are clearly set forth in the Opinion of the Chairman of this Commission, which received the concurrence of the entire body, reported in 7 Public Service Commission Reports 321.

Even with the increased fares sought by the company and allowed by the Commission, the company was estimated to be able to earn somewhat less than one-third of the interest on its bonded indebtedness chargeable against its railroad property, and is thus very close to the line where its operating expenses may exceed its operating revenues.

The dangers threatening this company are most forcibly expressed in the Opinion in that case in the following language:

"Obviously, from the examination which has been made, grave question exists whether or not the company can earn sufficient revenue on the new schedule or upon any basis whatever ultimately to survive. So far as the patrons of the road are concerned, the practical question would seem to be not so much whether the proposed rates are reasonable as whether or not on any rates whatever which might be adopted the road can long continue to operate." [p. 327.]

It is quite evident that this company can not survive any diminution of the revenue from the territory which it serves, arising from competition.

The petitioner here has not as yet made any investment in his proposed enterprise. He is not entirely sure as to how large a bus he wishes to purchase. At the hearing, he stated that he expected to commence with one motor vehicle, accommodating from 16 to 22 passengers, making three trips per day. No evidence has been given as to the solvency or ability of the petitioner to respond to claims for damage to persons or property. Its unstable position as a carrier and the propriety of protecting the Albany Southern railroad from competition seems to be conceded by the petitioner in this proceeding, in that he states in his petition as follows:

"The distance between Albany and Kinderhook is about twenty-two miles, and although our route will parallel the Albany [and] Southern railroad to East Greenbush, we will not accept passengers to or from that village and will compete between Albany-Kinderhook; there is about twelve miles on our route that we do not think is in competition with the Albany Southern railroad directly as it will be a great accommodation to the farmers and residents along this part of the line proposed, as will be seen by the attached map."

This allegation would seem to disclaim any intention to compete with the railroad line, and expresses merely a desire to serve those who are not accommodated directly by it.

An examination of the geographical situation is necessary at this point. The route of the proposed bus line follows within a few feet of the line of the trolley from its northern terminus in Albany to the hamlet known as Schodack Center. At this point the routes diverge, the trolley line bearing for a time to the west, describes a somewhat irregular arc of a circle, curving to the right, reaches the village of Valatie, and from thence continues to Kinderhook. From Schodack Center the proposed bus line runs more directly southerly, forming in a rough way a chord to the irregular arc described by the railroad, and thus reaches Valatie and then proceeds to Kinderhook, practically parallel to the line of the railroad between the villages.

By reason of this more direct route between Schodack Center and Valatie, the proposed bus line diverges from the line of the railroad, the variance in distance approaching a maximum, as indicated by the map, of over three miles.

The proposal of the petitioner to avoid competition with the railroad by not taking passengers between East Greenbush and Albany does not fully meet the situation. He would be in direct competition on a parallel line from Albany to Schodack Center, which is about two miles south of East Greenbush, and for a slight distance beyond the latter hamlet where the people could take either route they desired, but he would bring more direct and severe competition upon the railroad by conveying passengers to Valatie or Kinderhook through from Albany, or in the opposite direction, which is, as has already been stated, the portion of its line which supplies a very material proportion of the passenger carrying business of the railroad.

On this route between Schodack Center and Valatie, proposed by this bus line, and which is at a substantial distance from the route of the railroad, there are 58 dwelling houses, and tributary to this road on the cross roads intersecting it

are various other dwellings. The number of occupants of all these dwellings, both those on the proposed route and on the cross roads tributary to it, is between three hundred as estimated on behalf of the railroad and six hundred as claimed by the petitioner.

It seems to me that this population which is distant so far from the trolley line is entitled to the services of a public common carrier, if any such carrier can be found who desires to initiate and conduct the enterprise without competing with the established railroad line, and thus endangering the very existence of the latter.

It is alleged by the Railroad company that many of these dwellers on this proposed route and the adjacent territory have their own automobiles or other means of conveyance, and would not patronize the bus line. If this be so, they certainly do not patronize the more remote trolley line, and there would be no loss of traffic to the latter by the issuance of a certificate as requested. On the other hand, these people have in large numbers petitioned this Commission to grant this certificate, and apparently are desirous of the accommodation which may be afforded by the transportation facilities which would result therefrom.

There has been no complaint as to the service of the Albany Southern railroad, and it appears that eleven trips are made in each direction on week days and nine trips are made on Sundays over this entire route, and that the stopping places occur with reasonable frequency, there being thirty-one such stops in the twenty miles between the city of Rensselaer and the village of Valatie.

Under these circumstances it would seem to be the duty of the Commission to prevent competition which would overthrow this already tottering public utility, the Albany Southern Railroad, which is deriving a very material portion of its revenue from serving the localities reached by this proposed bus line.

On the other hand, there seems to be a substantial population which is not adequately served by this company, and

this accommodation would in nowise injure the railroad. If the activities of this proposed bus line were so curtailed as not to injure the railroad, a certificate could be properly granted, and indeed it is the conclusion suggested in the statement contained in the petition itself, which suggests the danger and impropriety of competition, but whose conceded limitations do not go quite far enough to protect the Railroad company.

I would therefore advise the issue of the certificate, but would broaden the restrictions which are usually inserted in such cases, prohibiting the carrying of local city passengers, to also prohibit the carriage of passengers except those whose journeyings either begin or terminate at a point not adequately served at present by the trolley line. I think, therefore, that the certificate should be issued, but only upon the express condition that no passengers shall be carried thereon except those whose place of boarding the line or whose place of alighting therefrom lies between a point in the proposed route one-half mile south of the hamlet of Schodack Center and a point thereon one-half mile north of the village of Valatie.

This limitation should be so embodied in the certificate as to render it inadvisable for the certificate holder to exceed its limitations, and the certificate should contain a condition to the effect that in case any passenger is carried contrary to these provisions the certificate may be revoked by this Commission.

It may be that the petitioner with these limitations will not care to initiate the enterprise, and before any certificate is issued he should advise this Commission within ten days from the entry of the order herein that he will accept such a limited certificate; and if he does not within said time notify this Commission of his acceptance, the application should be denied.

The certificate, if issued, should contain these special conditions, in addition to those usually inserted in such certificates:

1. The certificate may be canceled by this Commission in case it is shown any passenger has been carried by the petitioner, or his assigns, except those whose place of boarding the line or whose place of alighting therefrom lies between a point in the proposed route one-half mile south of the hamlet of Schodack Center and a point thereon one-half mile north of the village of Valatie.

2. The certificate may be canceled by this Commission in case the operation of the bus line is not commenced within thirty days from the issue of the certificate and such operation continued at all times when the roads are passable.

No cancellation of the certificate should be made unless and until its holder shall have notice and an opportunity to be heard.

All concur.

In the Matter of the protection of grade crossings of the tracks of the NEW YORK CENTRAL RAILROAD (WEST SHORE) at Feura Bush, Guilderland Center, and at a crossing about two miles south of South Schenectady. [Case No. 6971.]

In the Matter of the protection of grade crossings of the tracks of the DELAWARE AND HUDSON RAILROAD at Elsmere and Delmar. Order to show cause. [Case No. 6972.]

Audible-visible signals should be installed at all railroad crossings at grade where the view is obscured and the approach is dangerous.

Rule applied to specific instances under consideration.

Decided September 3, 1919.

Appearances:

Visscher, Whalen & Austin (by Mr. Whalen), 126 State street, Albany, attorneys for The New York Central Railroad Company.

Lewis E. Carr, Albany, attorney for The Delaware and Hudson Company.

KELLOGG, Commissioner:

These proceedings, in which separate hearings were held, involve the propriety of ordering the installation, at the crossings in question, of what are known as audible-visible signals, and the same principles are involved in each case.

These devices indicate the approach of trains by the display about twelve feet above the level of the highway of a red disc eighteen inches in diameter, in the daytime, and a red light at night. These signals are displayed when the train approaches a point about thirty-five hundred feet distant from the crossing. The display of the signal is accompanied by the ringing of a bell.

The audible portion of the signal, which has been in use for many years at dangerous crossings, seems not to be an

adequate warning in the case of the approach of automobiles which now constitute a very large portion of the traffic. The sound of the ringing bell is in most instances overcome by the noise of the automobile engine, and thus the further protection of the visible portion of the signal is added to protect properly such cases.

It was contended by an expert for the railroad in the first above entitled proceeding that the ordinary sign indicating the presence of a railroad crossing is sufficient, without any device giving the added information of the approach of the trains. If this be so, the audible signals, which for years have been maintained at dangerous crossings, are entirely superfluous. This theory is contrary to the practice and view of this Commission.

Following, therefore, the precedents established by this Commission, requiring audible-visible signals at crossings sufficiently dangerous to warrant their installation, it is proper to proceed to a discussion of these particular instances which have now been called to our attention by our Division of steam railroads.

In addition to the evidence adduced at the hearings, all of the crossings in question have been personally inspected by the sitting Commissioner, and the conclusions herein-after reached are based not only on the evidence taken but also upon such actual inspection at the premises in each case.

All of the five crossings in question are at grade and at the intersection of improved state highways upon which the travel is very heavy, and the use thereof, especially by automobiles, is very frequent. In each instance also the railroads are main lines.

1. *Crossing between Elsmere and Delmar*: At this point the intersection of the railroad and the state highway forms a very acute angle. Approaching from the north, the view is open and the approach can not be considered dangerous, but from the south the view to the west is very much obscured. Here there is an embankment, and also buildings

of various characters. On the easterly side there are also a building and trees which completely obstruct the view to one approaching from the south, and a deep gorge close to the road likely to divert the attention of a driver. At this place there is now an audible signal maintained, and I believe that the recommendation of the chief of the division of steam railroads, that an audible-visible signal should be installed here, should be followed so as to guard more adequately the approach from the south. As to the approach from the north, there would seem to be no necessity for any such warning, as the situation is plainly visible to an approaching driver for a long distance.

2. *Crossing at Elsmere Station:* At this point a situation exists where in the southwestern angle formed by the crossing intersection a group of buildings and dense foliage obstruct the view of the driver until almost upon the railroad track. The approach from the north is without any such danger, and it would seem, therefore, that at this place also an audible-visible signal should be installed facing toward the south, and that no such signal is necessary facing toward the north.

3. *Crossing at Feura Bush:* At this point approaching from the west there is an obstruction for a short distance, but in my opinion not sufficiently long to render the approach dangerous. Approaching from this direction the crossing is at the foot of a long grade, and the only danger in the situation would arise from the fact that the automobile driver at this point might not have his machine under control; if so, he would not be aided by any signal. Approaching from the east the road is practically level and the view unobstructed. I do not think the situation would be helped by the installation of any further safety devices.

4. *Crossing at Guilderland Center:* Here the situation is very dangerous. The railroad runs through a cut in both directions. Trains are not visible to persons approaching on the highway until nearly at the track. At this point an

accident occurred on August 8, 1919, resulting in the death of two men. An audible signal is now maintained at this crossing. Signals of the type suggested should be installed at this place, facing each way.

5. *Crossing in the Town of Rotterdam, Schenectady county, about two miles southerly from South Schenectady, on the road leading to Guilderland:* In the northeast angle formed by this intersection the view is obscured for the reason that the train approaches behind a bank and there is no opportunity to see it until the traveler upon the highway from the east comes very close to the railroad track. The approach from the other direction does not appear to be accompanied by any material risk. An audible signal is now maintained here. There should be a signal of the type suggested installed at this crossing facing toward the east.

If the foregoing conclusions be correct, audible-visible signals should be installed as follows:

1. Facing southerly at the crossing between Elsmere and Delmar.

2. Facing southerly at the Elsmere Station crossing.

3. A pair of signals facing each way at the Guilderland Center crossing.

4. A signal facing easterly at the crossing of the Guilderland road about two miles south of South Schenectady.

Chairman Hill and Commissioners Irvine and Fennell concur; Commissioner Barhite not present.

Application of INTERNATIONAL RAILWAY COMPANY for enforcement of the provisions of the Transportation Corporations Law as to operation of auto buses by Montano Bros. [Case No. 6985.]

The operation of a sight-seeing car, making one trip per day, between Buffalo and Niagara Falls, at a round-trip fare of \$3, visiting points of interest at both terminals *en route*, does not come within the provisions of sections 25 and 26 of the Transportation Corporations Law.

Decided September 3, 1919.

Appearances:

Harold Brown, Esq., for International Railway Company.
Clinton T. Horton, Esq., for Montano Bros.

BY THE COMMISSION:

The respondents operate what is commonly known as a sight-seeing car, in and between the cities of Buffalo and Niagara Falls, making as a rule one trip each day. The charge is \$3 for the round trip, which begins by a visit to the railroad and boat terminals and principal hotels in Buffalo to solicit passengers, who are then taken to points of interest in Buffalo, then to Niagara Falls, where a round of the points of interest in that neighborhood is made, the trip consuming substantially the entire day. No local business is done within either city except that, incidentally to their round-trip business, respondents extend to passengers embarking at the railroad and steamboat terminals a stop-over privilege at the Buffalo hotels, with the proviso that if the passenger decides not to proceed with the trip after reaching the hotel a charge of 25 cents is made for the carriage thereto. The nature of the trip does not require that any definite route be followed, and when there is time the part of the trip in Buffalo is varied. Sometimes the parks are included, and sometimes not. The International Railway

Company, which operates an electric railroad in the city of Buffalo with a local fare of five cents, and from that city to and into the city of Niagara Falls with a one-way fare of about sixty cents, claims that the operation of respondent's car constitutes a violation of sections 25 and 26 of the Transportation Corporations Law, and invokes the action of the Commission, pursuant to the provisions of section 57 of the Public Service Commissions Law, which make it the duty of the Commission, if it shall be of opinion that a common carrier subject to its supervision is doing anything contrary to or in violation of law, to direct its counsel to proceed against the offender in the Supreme Court for the purpose of having such violation stopped and prevented.

Sections 25 and 26 of the Transportation Corporations Law read as follows:

Sec. 25. *Additional persons and corporations subject to the Public Service Commissions Law.*—Any person or any corporation who or which owns or operates a stage route, bus line or motor vehicle line or route or vehicles described in the next succeeding section of this act wholly or partly upon and along any street, avenue or public place in any city shall be deemed to be included within the meaning of the term "common carrier" as used in the public service commissions law, and shall be required to obtain a certificate of convenience and necessity for the operation of the route or vehicles proposed to be operated, and shall be subject to all the provisions of the said law applicable to common carriers. (Added by L. 1913, ch. 495, and amended by L. 1915, ch. 667.)

Sec. 26. *Consent required.*—No bus line, stage route nor motor vehicle line or route, nor any vehicle in connection therewith, nor any vehicles carrying passengers at a rate of fare of fifteen cents or less for each passenger within the limits of a city or in competition with another common carrier which is required by law to obtain the consent of the local authorities of said city to operate over the streets thereof shall be operated wholly or partly upon or along any street, avenue, or public place in any city, nor receive a certificate of public convenience and necessity until the owner or owners thereof shall have procured, after public notice and a hearing, the consent of the local authorities of said city, as defined by the railroad law, to such operation, upon such terms and conditions as said local authorities may prescribe, which may include provisions covering description of route, rate of speed, com-

pensation for wear and tear of pavement, improvements and bridges, safeguarding passengers and other persons using such street, and no such operation upon the streets of any such city shall be permitted until the owner or operator of such vehicles or proposed line or route shall if required by such local authorities have executed and delivered a bond to such city in an amount fixed by said local authorities and in the form prescribed by the chief law officer of said city with sureties satisfactory to the chief fiscal officer of said city, which bond may be required to provide adequate security for the prompt payment of any sum accruing to said city, and the performance of any other obligations, under the terms and conditions of such consent, as well as adequate security for the payment by such owner of any damages occurring to, or judgments recoverable by, any person on account of the operation of such line or route, or any fault in respect thereto. The town board of any town or the board of trustees of any village may adopt a resolution providing that the provisions of this section shall apply to such town or village, and thereafter no bus line, stage route, motor vehicle line or route shall be operated, wholly or partly, upon or along any street or highway in such town or village, nor receive a certificate of public convenience and necessity until the owner or owners thereof shall have procured the consent of the local authorities of such town or village, in the same manner and subject to the same terms and conditions as is provided in the section for procuring the consent of the local authorities of the city; and for such purpose the town board of such town, in the case of a town and the board of trustees of the village in the case of a village, shall be deemed the local authorities thereof. (Added by L. 1915, ch. 667, and amended by L. 1919, ch. 307.)

The respondents have not secured the certificate of convenience and necessity of the Commission and the consents of local authorities in either Buffalo or Niagara Falls to the operation of said car in conformity with these statutory provisions.

It follows that, if in the opinion of the Commission the respondents are violating the statute in question by operating within the limits of a city —

1. A bus line;
2. A stage route;
3. A motor vehicle line or route;
4. A vehicle in connection with a bus line, a stage route, or a motor vehicle line or route;

5. A vehicle carrying passengers at a rate of fare of fifteen cents or less for each passenger within the limits of a city; or

6. A vehicle carrying passengers in competition with another common carrier which is required by law to obtain the consent of the local authorities of said city to operate over the streets thereof;

it is its duty to proceed against them in conformity with the request of the applicant.

We think the limited and incidental local service between the transportation terminals and the hotels, at a charge of 25 cents per passenger, can not be considered to be a carrying in competition with the applicant with its five cent fare under the facts as shown in the record; the rate is certainly not competitive in the ordinary acceptance of the word, nor is it shown that the railroad reaches the various hotels with equal facility.

Neither is it claimed that the service complained of falls within either the fourth or fifth prohibitions of the statute as above enumerated.

The question is thus narrowed to whether or not the respondents are operating in either of the cities of Buffalo or Niagara Falls "a bus line," "a stage route," or "a motor vehicle line or route" within the meaning and intent of the statute. We do not conceive that they are, and are of opinion that the prohibition of the statute does not apply to the enterprise which they are conducting.

We are referred to the case of *Public Service Commission v. Hurtgan*, 91 Misc. 432, where at the suit of this Commission the Supreme Court at Special Term decided that Hurtgan was violating the statute in question. But the character of the business plied by Hurtgan was not that of sight-seeing, but to the extent that it comprised travel within the city was ordinary transportation of passengers upon a schedule of nine trips per day along a defined route over the city streets.

The enterprise under consideration merely provides a pleasure excursion. It is not a "common carrier" within the usual acceptation of the term, and should not be treated as such unless the statute clearly so requires, which in our opinion it does not.

The application is therefore denied.

In the Matter of the Complaint of the CITY OF OSWEGO, by John Fitzgibbons, Mayor, *against* EMPIRE STATE RAILROAD CORPORATION as to condition of the tracks and ties of said railroad in the city of Oswego. [Case No. 6982.]

The power of local municipal authorities to require a street surface railroad to pave between its tracks and two feet each side thereof, as provided in section 178 of the Railroad Law, does not include the power to order the replacement of the tracks.

The power to order the replacement of the track line in such a case is vested in the Public Service Commission under section 50 of the Public Service Commissions Law, and is properly exercised in a case where the track has become insecure and unsafe for ordinary operation of the railroad.

Decided September 11, 1919.

Appearances:

John Fitzgibbons, Mayor, Oswego, in person.

John R. Pidgeon, City Attorney, Oswego, for the complainant.

Nottingham, Nottingham & Edgcomb (by William Nottingham), Syracuse, for the respondent.

KELLOGG, Commissioner:

This is a proceeding under section 50 of the Public Service Commissions Law, initiated upon the complaint of the Mayor of Oswego, in which this Commission is requested to direct the replacement of certain tracks upon East Bridge street and Erie street in the said city, alleged to have become worn out and dangerous for use. The city is now engaged in re-paving the streets in question, and a contract which has been let for that purpose is now in process of performance.

Upon some portions of the streets in question a material change in grade has been adopted, and the line of the railroad varies from such grade a distance approximating

in some places, two feet. So far as the re-pavement of the streets in question, between the tracks of the railroad and two feet each side thereof, the matter is regulated by section 178 of the Railroad Law, which directs the railroad corporation to make such repairs under the supervision of the proper local authorities, whenever required by them to do so, and in such manner as they may prescribe. The section further provides, "In case of the neglect of any corporation to make pavements or repairs after the expiration of twenty days' notice to do so, the local authorities may make the same at the expense of such corporation".

It is alleged in the complaint that such proceeding has already been taken, and therefore the rights and liabilities of the parties, so far as the repair of the street surface is concerned, have already been fixed by the section referred to. As to the replacement of the worn track, however, section 50 of the Public Service Commissions Law becomes applicable, and the order of this Commission is requested with the view, which I think is correct, that unless such order is made the railroad company can not be compelled to replace or renew the track line itself.

It is alleged in the complaint that the worn out and dangerous condition of the tracks exists as to that portion of the railroad on East Bridge street between Fourth street and Tenth street, and upon Erie street from Fourth street to the end of the line which is at Hawley street.

Upon the hearing it developed that the claim of the city in this regard, so far as Erie street was concerned, was limited to that portion between Fifth street and Hawley street.

Evidence was taken as to the condition of these tracks, and the chief of the division of electric railroads of this Commission was sent to examine the location, and his report thereon after such examination was read in evidence as part of the record. From the evidence in the case, including this report, it is quite apparent that the entire portion of the track on East Bridge street between Fourth and Tenth

streets, and that portion of the track on Erie street between Ninth street and Hawley street, is not in suitable condition for the safe operation of the railroad in the operation of its cars at reasonable and proper rates of speed, and that in the language of section 50 of the Public Service Commissions Law, "changes in construction should reasonably be made thereto in order to promote the security" and "convenience of the public or employees," and "in order to secure adequate service" and "facilities for the transportation of passengers" and "property". The remainder of the track on Erie street should perhaps properly as a business proposition be replaced at the time of re-pavement, but we can not from the evidence find that it is in such an unfit condition as to authorize the direct order of this Commission for its replacement, on the ground of its inadequacy or its insecurity. In the early days of this proposed improvement there seemed to be no controversy between the company and the city as to the re-paving by the company and the replacement of its rails. Disagreement has, however, arisen as to the rates of fare and frequency of service which has given rise to a somewhat strained condition between the city officials and the officers of the company. In view of present conditions and expenses of operation, the company takes the position that rather than continue the operation of its cars in this city at the present five-cent fare, which it claims requires an expenditure for operation in excess of revenues, it would prefer to abandon its entire local system in the city. A resolution to that effect has been adopted by its board of directors, and a meeting of its stockholders is called to be held on the 23rd of September instant. I think, however, the pendency of this abandonment proceeding, which may or may not be pressed to a conclusion, forms no reasonable objection to the present discharge by this Commission of its duty in the premises. The tracks of the railroad upon those portions of the street above described are evidently inadequate, dilapidated, unsafe, and unsuitable for public use, and the rails should be replaced. In fact, the attention of

this Commission was called to this situation on May 29, 1918, by its electric railroad division in a report which stated —

“The track from Ninth street to Hawley street, a distance of approximately 1000 feet, is in poor condition and should be reconstructed when street is paved. Track through East Bridge street, from Fourth street to Ninth street, a distance of 2160 feet, is in poor condition and should be reconstructed at the time the street is re-paved.”

This report was filed here more than a year before the present proceeding was initiated.

In view of the pendency of the paving contract, this replacement should be ordered at the very earliest practical moment. We are advised by the chief of the division of electric railroads that the earliest period in which the completion of such work under such order would be practicable, and in accordance with the precedents established in similar cases, would be twenty-five days. During this time the railroad company will have definitely officially determined upon its abandonment resolution, and may take such action thereafter, if such resolution be adopted, as it may be advised. New rails should be ordered to be laid upon East Bridge street from Fourth street to Tenth street, and on Erie street from Ninth street to Hawley street, within twenty-five days from the service of the order of this Commission, which rails should be girder rails of a weight of at least 80 pounds to the yard, or “T” rails of the weight of at least 70 pounds to the yard, and should be laid at the same grade as the paving improvement now in course of construction in said city.

Chairman Hill and Commissioners Irvine, Barhite, and Fennell concur.

In the Matter of the Complaint of the BATAVIA CHAMBER OF COMMERCE *against* UNITED STATES RAILROAD ADMINISTRATION, LEHIGH VALLEY RAILROAD COMPANY AND NEW YORK CENTRAL RAILROAD, asking that switch connection between said railroads be established in Batavia. [Case No. 6729.]

This Commission has no jurisdiction to require two railroads to connect their lines by an interchange track when the purpose of said track is to give one common carrier the use of the terminal facilities of another common carrier.

Decided September 18, 1919.

Appearances:

Newell K. Cone, Esq., as President and attorney for Batavia Chamber of Commerce, Complainant.

Richard R. Coley, Esq., as Secretary of Complainant.

R. L. Kinsey, Esq., as attorney for Committee of Batavia Chamber of Commerce.

Maurice C. Spratt, Esq., as attorney for United States Railroad Administration and The New York Central Railroad Company.

E. H. Burgess, Esq., as attorney for Lehigh Valley Railroad Company.

BARHITE, Commissioner:

This is an application by the Batavia Chamber of Commerce to compel a switch and interchange track connection between the main line of the Lehigh Valley railroad and the Canandaigua and Tonawanda branch of the New York Central railroad in the city of Batavia.

The complainant, as its name indicates, represents the business interests of that city. The main line of the Lehigh Valley railroad passes along or near the southerly boundary

of the city, and less than half a mile to the north is the main track of that branch of the Central railroad to which reference has been made. A switch one-half mile long, in a curved form, now extends from the tracks of the Lehigh Valley railroad to within practically one hundred feet of the tracks of the New York Central railroad. This switch was constructed between the two railroads about the year 1891, for the purpose of allowing the Lehigh Valley trains to reach Niagara Falls and Suspension Bridge over the tracks of the New York Central railroad; at a later date—about November, 1896—the Lehigh Valley Railroad Company having completed tracks of its own, ceased to use the connection in question and reached the places named by way of a junction at or near Depew.

Thereupon the connection between the two railroads at Batavia was severed, and the switching apparatus at the main track of the New York Central railroad was removed and about one hundred feet of the switch track at this point was taken up.

For nearly twenty-three years there has been no direct connection between the two roads over this switch. The remainder of the switch is intact, and is apparently in good condition. This appears from the fact that it is constantly used by the Lehigh Valley railroad to draw cars to and from that road to the plant of the Batavia and New York Wood Working Company situated alongside the Canandaigua and Tonawanda branch of The New York Central Railroad Company.

There is a connection between the switch in question and the main track of The New York Central Railroad Company over a private switch owned by the Wood Working Company and on the land of that company and intended solely for the use of that company. At times, through the courtesy of the officials of the Wood Working Company, cars have been passed between the two railroads over this private switch.

To restore the connection desired would cost, from the testimony of an engineer called by the complainant, approximately \$500, and the details of his figures are given.

An engineer of the Central railroad, however, places the cost at \$1100, but no details are given; and in addition there would be, in his opinion, necessity for a receiving and a delivery track costing together approximately \$7400.

In view, however, of the doubt expressed by the railroad authorities that there would be many cars to be interchanged, and the admission of the railroad engineer that with a small business the delivery and the receiving track might be omitted, it would hardly be necessary to construct them until the amount of traffic made such construction necessary. Whether or not the Wood Working Company might allow, for a proper compensation, its private track to be used generally for interchange purposes does not appear, and must rest entirely upon private agreement made with that company.

It may be said in passing that interchange of freight between the two railroads is had about thirty-five miles west of Batavia at or near Buffalo, and on the east at Geneva, about sixty-five miles away.

It becomes necessary, however, to examine the jurisdiction of the Commission to grant the relief desired by the complainant.

In the case of the *People ex rel. New York Central Railroad Company and International Railway Company, Relators, v. Public Service Commission*, 177 A. D. 208, affirmed 223 N. Y. 582, this Commission was requested to make an order requiring the relators to make such track connections and lay such switches and sidings as to constitute an adequate and convenient system for the interchange of freight cars between the two railroads in that part of Lockport known as "Upper Town". The Commission made such order. Upon appeal, the Appellate Division calls attention to section 35 of the Public Service Commissions Law which

provides, "Every common carrier is required to afford all reasonable, proper and equal facilities for the interchange of passenger and property traffic between the lines owned, operated, controlled or leased by it and the lines of every other common carrier. . . . This section shall not be construed to require a common carrier to permit or allow any other common carrier to use its tracks or terminal facilities. Every common carrier, as such, is required to receive from every other common carrier, at a connecting point, freight cars of proper standard and haul the same through to destination, if the destination be upon a line owned, operated or controlled by such common carrier, or if the destination be upon the line of some other common carrier to haul any car so delivered through to the connecting point upon the line owned, operated, controlled or leased by it, by way of route over which such car is billed, and there to deliver the same to the next connecting carrier."

The court says, "The two provisions of section 35 of the Public Service Commissions Law are to be read together and each given its due weight and proper meaning. So read, they are intelligible and consistent. The former provision of the section is applicable to shipments terminating at Lockport. The latter provision refers to connecting points in route, and in the case at bar is applicable to cars routed through Lockport by way of the International which must be turned over by that company to the New York Central at North Tonawanda or Lockport to be carried toward their destination."

The court further holds that "the word 'terminals' is applicable to not only the portion of the main track, sidings and team tracks used in loading and unloading freight, but also to industrial switches at which freight shipments terminate. A terminal point is a place of consignment."

The court further holds, "Terminal systems are instrumentalities which assist in the collection and distribution of traffic". "The word 'use' as applied to the provision

prohibiting the use of the terminal facilities of one common carrier by another was not intended to be confined to the actual presence of the locomotive of the connecting carrier." "The running of freight cars over the track of another railroad without its consent is just as much 'use of the tracks' as if the locomotive was attached." "The provision of section 35 of the Public Service Commissions Law, that 'this section shall not be construed to require a common carrier to permit or allow any other common carrier to use its tracks or terminal facilities,' is definite and unambiguous and the intent of the Legislature in enacting it apparently clear."

The court further calls attention to what it describes as a pertinent suggestion by one of the Commissioners at a hearing before the Public Service Commission, and this suggestion was in the following words: "Suppose Road A has acquired at great expense terminals and terminal facilities in the city of Buffalo, and reaches to all the manufacturing establishments; Road B builds up to the city line and makes connection with Road A at the city line and gets the benefit of all its terminals in the city without any expense to it at all, and a road which has invested a million dollars in terminals in the city of Buffalo has to furnish those terminals for the benefit of the road which has not put a dollar into the city at all for terminals to accommodate the public. That you have got to think of."

The object of the Chamber of Commerce is to facilitate the loading and the unloading of freight at Batavia, especially in carload lots. It is not the purpose to form an interchange between the railroads whereby freight may be transferred to points beyond the city. The greater part of the industries of Batavia are at or near the New York Central tracks, and the greater number of those persons who may receive or send freight are much nearer to these tracks than the tracks of the Lehigh Valley railroad, so that, under the definition of the Appellate Division, to direct an interchange between the two roads would be to compel the use of

the terminal facilities of both roads and especially those of the New York Central railroad. Under the statute and the interpretation of that statute by the courts, this Commission has no jurisdiction to grant the required relief.

All concur.

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Petition, or Complaint, of GENEVA, SENECA FALLS AND AUBURN RAILROAD COMPANY, INC., under subdivision 1, section 49, Public Service Commissions Law, and section 181, Railroad Law, for permission to increase passenger fare. Also for modifications of orders in Case No. 5488 and Case No. 6081. [Case No. 6922.]

After an examination of the operating conditions of the Geneva, Seneca Falls and Auburn Railroad Company, Inc., showing for a considerable period a net corporate deficit, a proposed schedule of new rates resulting in a general increase was approved.

Decided September 18, 1919.

Appearances:

Lansing G. Hoskins, 541 Exchange street, Geneva, for petitioner.

MacDonald Brothers (by Clarence A. MacDonald), Seneca Falls, for the Village and Town of Seneca Falls, in opposition.

IRVINE, Commissioner:

This is an application for permission to install tariffs operating to increase rates on the interurban line of the petitioner extending from the city of Geneva to Cayuga Lake Park. The reasons for applying to the Commission are that the proposed tariffs involve an increase in fare within the villages of Waterloo and Seneca Falls, and that interurban fares have been largely fixed by previous orders of the Commission. [See cases Nos. 5488, 5761, 6081. Also Opinions in two of these cases: 6 P. S. C. Reports 2nd District, 151; 7 P. S. C. Reports 2nd District, 160.] Case No. 6081 involved chiefly rates within the city of Geneva, but extended the city rate to a point on the interurban line known as Lake Road, thereby affecting interurban rates. The rates are made on the zone system. The rate for each zone has heretofore been six cents, but in case No. 5761 the

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company was sustained in establishing a new zone between Geneva and the village of Waterloo. The change in the proposed tariffs is somewhat complicated. It establishes a new zone between Seneca Falls and Cayuga Lake Park. It shortens the Geneva city zone one-half mile, terminating it at the station known as Coke Works, where the city fare of six cents will end, and installs a zone to cover the intervening distance between Coke Works and Lake Road wherein the fare will be one cent. In other zones, the fare proposed is seven cents for travel within a single zone, a fare of thirteen cents for travel between any two zones, twenty cents between any three zones, twenty-six cents between any four zones, and thirty-three cents between any five zones, with a maximum fare of thirty-nine cents between Geneva and Cayuga Lake Park, the two termini. The order permitting the six cent fare in Geneva was made June 20, 1918, and the new rates took effect soon thereafter. In examining the operations of the company, studies have been made of the years 1917 and 1918 by six months' periods: first, in order to obtain a basis of comparison with the first half of 1919; and second, in order to disclose the effect on the revenues of the company of the increased fares in the city of Geneva.

A condensed income account is as follows:

Item	Six months ended June 30			Six months ended Dec. 31	
	1917	1918	1919	1917	1918
	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>
Passenger revenues.....	48,763	51,074	55,080	54,038	51,428
Miscellaneous revenues.....	1,943	1,490	1,742	2,497	1,681
Total railway operating revenues.....	50,706	52,564	56,822	56,535	53,109
Total railway operating expenses.....	29,908	38,873	42,403	39,485	41,093
Net revenue, railway operations.....	20,797	13,691	14,420	17,051	12,016
Taxes.....	3,172	8,818	3,897	3,116	2,437
Operating income.....	17,625	9,879	10,523	13,935	6,579
Non-operating income.....	53	71	66	61	39
Gross income.....	17,679	9,950	10,589	13,997	6,617
Total deductions from gross income.....	15,775	14,841	14,461	23,772	14,461
Net income.....	1,905	*4,109	*2,128	*9,225	*5,156

* Deficit.

The cause or causes of the decrease in revenues in the second half of 1918 as compared with the second half of 1917 are not manifest. There is a marked falling off of the number of passengers carried. No doubt this was in part due to the increase in the city fares. The generally prevailing epidemic of influenza in the Fall of 1918 resulted in many cities, as disclosed in other proceedings before the Commission, in a very great decrease in traffic. This factor was probably existent in Geneva and elsewhere along the petitioner's lines. There may have been other causes. At any rate their effect seems to have been overcome, for the first half of 1919 shows a marked increase over the second half of 1918 as well as the first half of 1918. It is evident that the company is gaining revenue by reason of the increased city fares, but it is left with a gross income for the first half of the current year of only \$10,889 and a net deficit of \$3562. An increase in wages of motormen and conductors, forced by circumstances upon the company July 1, 1919, will increase the operating expenses about \$4000 a year. This would point to an annual deficit of about \$11,000 if conditions for the first half of 1919 should continue, as modified only by the increased platform expenses. The various items of operating expenses have been examined and have been found to be moderate. For reasons stated in case No. 6081, 7 P. S. C. Reports 2nd District, 160, the Commission thinks that no deduction should be made from these operating expenses of the depreciation reserve therein referred to. Furthermore, this seems to be merely a book-keeping reserve. It has not been reinvested in additions or extensions but has apparently been absorbed in operation and maintenance. No dividends have been paid in recent years.

In this state of affairs it is not necessary to enter into the question of value. The funded debt as of December 31, 1918, was \$521,000. At the time of the reorganization resulting in the present corporation, a valuation was made which, with adjustments to December 31, 1918, give a fixed

capital total of \$623,021.19. It is, therefore, clear that the company is entitled to earn something more than its fixed charges, and it is not doing so.

The next question arising is whether the proposed method of increasing the revenues is reasonable and just. The city zone is terminated at the Coke Works. This takes care of the workers at that plant on the regular city fare although the Coke Works are outside the city limits. One cent additional carries a passenger one-half mile farther, to the existing limits of the so called city zone. There is a general overlapping of zones which has the effect of removing to some extent the discrimination necessarily existing under any zone system against those boarding the car near the limit of one zone and riding into the next. Riders in two different zones will have a rate in each of six and one-half cents, and those whose rides extend into three or more zones will have a rate of six cents or seven per zone. So far, if the increase is to be permitted, the arrangement for the increase seems as fair as it is practicable to make it. There was no opposition at the hearing except on the part of the Village and Town of Seneca Falls, and that opposition largely crystallized against the insertion of a new zone between Seneca Falls and Cayuga Lake Park. In the past there have been two zones from what is known as the Kingdom station at the west end of the village of Seneca Falls to Cayuga Lake Park, but a single fare was charged in the summer months to those passengers whose rides extended from points within the village to points east of Garden street at the east of the village. It is proposed to continue the double fare throughout the year, making the ride from Cayuga Lake Park to points within the village of Seneca Falls thirteen cents where it is now six cents in Summer, and twelve cents in Winter. There was formerly at Cayuga Lake Park a summer resort of the character formerly fostered by street railroad companies with the notion that they would create sufficient railroad traffic to justify their

existence. This scheme was abandoned several years ago, and now the travel between the village of Seneca Falls and Cayuga Lake Park is confined to the families of a few farmers near the railroad and to a few families living along the shore of Cayuga Lake near the former park. The existing zone extends 4.63 miles, while no other zone is longer than 2.82 miles and the average is 2.37. This makes the Cayuga Lake zone the zone of cheapest travel while it is the one of least travel. It is hard for people to get along without privileges to which they have been long accustomed. Even in the wildest days of electric railroad promotion no one would have built the piece of road from Seneca Falls to Cayuga Lake Park had it not been for the delusion of summer resort travel. The population served is entirely too small to justify the operation of that piece of road as an independent line. If it subsists, it must do so as more or less of a parasite on the rest of the system. In the condition of this corporation the choice of the few people using this part of the line is not between the present fare and a higher fare, but between service at the higher rates and no service at all.

The Commission is by no means sure that the relief desired and hereby granted will afford anything approaching the theoretical result of the increase. It is sure that it will do no more than enable the company to continue operations, maintain its property, and pay its interest and taxes.

All concur.

Petition of the SOUTHERN NEW YORK POWER AND RAILWAY CORPORATION under section 184, Railroad Law, for approval of a declaration of abandonment of a portion of its route in the city of Oneonta. [Case No. 6609.]

This Commission can only approve a declaration of abandonment of a portion of the route of a street surface railway when it appears that the portion of the route in question is no longer necessary for the successful operation of the whole route of the company's road and the convenience of the public.

The financial condition of that portion of the road which it is proposed to abandon is not material except as such condition bears upon the question as to whether the amount of its patronage shows that the road is not necessary for the convenience of the public.

Decided September 30, 1919.

Appearances:

N. P. Willis, Esq., and Messrs Phillips, Mahoney and Leibell, for the petitioner.

Owen C. Recker, Esq., for the City of Oneonta.

Messrs. Thompson & Van Woert for the Oneonta Chamber of Commerce.

BARHITE, Commissioner:

This is an application by the Southern New York Power and Railway Corporation for an approval of a declaration of abandonment of a branch of its line within the city of Oneonta called the "Normal Line". The petitioner operates a street surface railroad in and between the city of Oneonta, the villages of Cooperstown, Richfield Springs, and Mohawk, making altogether about fifty-eight miles of main line and five or six miles of siding. The portion which it is desired to abandon begins at the intersection of Church street with Chestnut street and extends for about one mile to a point just south of the Normal School. The ostensible

reason for the abandonment, in the petition, is that the portion of the company's route sought to be discontinued is no longer necessary for the successful operation of the railroad of the petitioner and the convenience of the public. The real reason developed by the testimony is the claim of the railroad company that the Normal line is not financially successful.

Any authority which the officers of a street surface railroad or the stockholders of such road may have to abandon any portion of the route of the road owned and controlled by them is derived from section 184 of the Railroad Law, and the approval of this Commission must be based upon the provisions of that section. The reasons there found which authorize the relinquishment of any portion of a road are that the portion to be abandoned is no longer necessary for the successful operation of the road and the convenience of the public. No authority is granted to the owners of the road or to this Commission to approve the abandonment of any portion of a street railroad because the income from that portion of the road is not satisfactory, although it is true, under normal conditions and proper management, that if the public does not patronize a road sufficiently to grant the income which the road should earn, such fact is strong, if not conclusive, evidence that the road is not necessary for the convenience of the public.

In *Paige v. Schenectady Railway Co.*, 178 N. Y. 102, at page 114, the court says, "A railroad corporation owes a duty to the public to exercise the franchise granted to it and it can not abandon a portion of its road and incur a forfeiture at its mere pleasure."

The principle enunciated in the case cited is embodied in the statute to which reference has been made, and which names only two reasons which authorize the abandonment of a portion of a street surface railway. The burden of proof in the proceeding is upon the petitioner, and has it been

shown that the Normal line is no longer necessary for the convenience of the public?

This line has been operated for many years. The vice-president and general manager of the road, in his testimony, speaking of the Oneonta City lines, says that within the past three years the revenue on the east and on the west lines has been approximately the same but that it has decreased on the Normal line; and he adds, "But the service, we admit that the service has not been as good on the Normal line, and that has probably been the cause of the decrease, largely the cause. We admit that." That lack of patronage has resulted from poor service is no evidence that the line is not needed for the convenience of the public. The petitioner has not shown the results from the operation of the Normal line except for a comparatively brief period. The witness named further says that the track has not been in very good condition for the past three years, and that of course has kept some people away from it. The gross earnings of the line in question for 1917 were \$4092; the gross operating expenses for the same time were \$4482. The expenses consisted of payroll, \$3066; power, \$384; track and overhead, \$581; maintenance of equipment, \$451. The expenses exceeded the revenues by only \$390. The annual report for the year 1917 filed with the Commission shows a net corporate income, available for dividends after the payment of taxes and interest, of \$20,735.71, coming from the operation of all of the company's lines. In other words, the loss on the Normal line was but a small item in the total operation of the road, and after allowing for the loss on the Normal line the company still had a balance in its treasury. In 1918 the report of the company shows a net corporate income of \$6199.60.

The Missouri Public Service Commission has held, *Culver v. St. Joseph & G. I. R. Co.*, P. U. R. 1917-B, page 542, at page 571, citing a number of cases in support of its

position, that although loss results in operating a line or branch, if the entire system may be operated at a profit, there is no confiscation of property or deprivation of property rights; that the question of loss must be considered in connection with the carrier's duties and the productiveness of its corporate business as a whole. The law imposes upon it the duty of furnishing adequate facilities to the public on its entire system, not a part, and it can not be excused from performing its full duty merely because by ceasing to operate a part of its system the net returns would be increased.

This Commission has held, Commissioner Irvine writing the Opinion, *in re Empire United Railways, Inc.*, P. U. R. 1915-E, page 263, that the abandonment of a particular line of a street railway should not be permitted merely because for the time being it is conducted at a loss.

The petitioner claims and offers evidence to prove that it must expend a large sum of money to put the Normal line in proper condition if the operation of that line is to be continued. It is hardly probable that the amount named will be needed or expended. It may fairly be assumed from the evidence that if the road and equipment are put in good condition that the revenues of the company will be largely increased.

Objection to the continued operation of the line is also made upon the ground that an ordinance has been passed and a contract let for the paving of about 1750 feet of one of the streets upon which this line operates. It is not the intention of the city authorities to charge any part of the cost of this improvement to the railroad company, and the ordinance was drawn with that end in view.

The prayer of the petition should be denied.

All concur.

Complaint of the VICTOR BOARD OF TRADE *against* AMERICAN RAILWAY EXPRESS COMPANY as to abandonment of express service on Lehigh Valley Railroad at Victor, Ontario county. [Case No. 6862.]

Decided September 30, 1919.

Appearances:

Mark T. Powell, Esq., attorney for Victor Board of Trade, and various business men of Victor.

E. W. Bartholomew, Esq., President of Victor Board of Trade.

Leslie G. Loomis, Esq., in person.

A. W. Hartung, Esq., attorney for American Railway Express Company.

BARHITE, Commissioner:

This is a proceeding by the Victor Board of Trade against the American Railway Express Company, asking for the restoration of an express agent at the station of the Lehigh Valley Railroad Company in that village which contains a population of about eleven hundred. Both the Auburn branch of the New York Central railroad and the main line of the Lehigh Valley railroad pass through the municipality, the former slightly over one-half of a mile from the active business center and the latter very close to that center.

For many years there has been an express agent at the station of each road in the village, until January or February, 1919, when the agency at the Lehigh station was abolished and the express business shifted to the New York Central railroad. It is true that the express company now handles the business of a preserving company situated near the tracks of the Lehigh Valley railroad, over that road, and is willing to transact other business over the same road provided the goods to be shipped are brought to the station and

there kept by the shipper until the arrival of the proper train, and then delivered to the messenger on the train and his receipt taken therefor. Some of the village merchants buy perishable goods in Buffalo, and they may be sent direct from that city over the Lehigh Valley and arrive at their destination in slightly more than two hours' time. The route between Buffalo and Victor is slightly shorter and more direct over the Lehigh Valley railroad than over the New York Central. One firm in Victor ships during the year a considerable amount of money to its agents who are buying produce at various stations along the line of the Lehigh Valley railroad. This money can not be sent from the Lehigh Valley station, but must be taken to that point and held until the train arrives, whether on time or not. Money or goods when shipped by the Lehigh Valley for points on that line near at hand arrive at their destination within a short time; when shipped by the New York Central they must be carried by that road to some transfer point, and then sent to their destination over the Lehigh Valley, a process involving delay.

The express company claims to have made the change to which exception is taken in the interest of efficiency and economy. It is difficult to understand where the added efficiency arises under the present plan. Many of the goods shipped must be carried over a longer route, and transfers made which involves delay. Certainly from the standpoint of the shipper the service is not more efficient; neither is any appreciable amount saved in expense. Both the agent at the New York Central and at the Lehigh Valley stations were paid on a commission basis. The agent formerly at the Lehigh Valley is willing to work for the same commissions paid to the agent at the Central station. It is in evidence that no extra expenses, except his commissions, were involved by the employment of the agent at the Lehigh Valley station, but his commissions were not an extra expense.

The only question involved is whether commissions upon the express business at Victor shall be paid to one man or divided between two men; or whether express rates shall be paid to one railroad or divided between two railroads. The board of trade asks for no extra trains or cars, or that the time of the present trains shall be changed, or that any train which does not stop shall be required to stop. The prayer of the petition should be granted.

All concur.

Petition of JOSEPH CARLUCCI under chapter 667, laws of 1915, for a certificate of public convenience and necessity for the operation of a stage route by auto buses in the city of White Plains, it being proposed that the route shall be operated to the incorporated village of Port Chester. [Case No. 6881.]

Decided October 7, 1919.

Appearances:

Benjamin I. Taylor, 24 South Main street, Port Chester, for the applicant.

Eugene F. McKinley, White Plains, for The Westchester Street Railroad Company.

Strang & Taylor (by Mr. Taylor) and *John J. Hughes*, White Plains, for John H. Calhoun.

FENNELL, Commissioner:

Joseph Carlucci petitions for a certificate of public convenience and necessity for a stage route to be operated by auto buses in the city of White Plains from the Orawaupum Hotel easterly on Main street to Westchester avenue, and along Westchester avenue to the city line. From the city line the route continues to Port Chester.

The proposed transportation service will be by eight four-passenger cars with a headway of from twenty minutes to half an hour between 7:20 a. m. and about 9 p. m. at 25 cents per passenger, with a commutation rate of five tickets for \$1.

From the evidence in this case it appears that nine young men, including petitioner, have each been operating one four-passenger touring car on this route for from three to six years.

Prior to the filing of this application and on January 14, 1919, petitions were filed for certificates as to this route by John H. Calhoun, Westchester Motor Transportation Company, and Meyer N. Finkelstein. These three petitioners received certificates. Calhoun has operated ever since; Meyer N. Finkelstein has not operated at all, and the Westchester Motor Transportation Company claims to have operated through an agent named Louis Kass (see case No. 6724).

The petitioner herein and the eight other young men who have been operating this route for several years have made an agreement in writing whereby the eight are to furnish each his own car, operate for and under the direction of petitioner who is to assume entire charge of the business of operating the line and to furnish an extra car or cars when any of the eight fail to operate. Each of the eight is to account to the petitioner daily for all revenues and turn same over to him, out of which he will return 90 per cent to each. It is apparent that the agreement is the method these young men have adopted to make legal the business they have built up after years of effort. The agreement provides for an equitable division of the transportation work, and should give a much steadier and more satisfactory schedule to the public.

If this was an application to render service on a route already well provided with transportation facilities which had been built up by those running such facilities, such a petition as this should be denied. But here we have a number of young men who have built up a transportation business by their own efforts, and are now attempting to legalize the business thus established.

The objection raised by a present certificate holder who made his application January 14, 1919, for the same route ought not to be sustained where such certificate holder came into the actual transportation field so long after the applicant, and where the objector's priority is based on legal expedi-

tiousness in obtaining a certificate and not on a prior building up and establishing of a transportation business on the route in question.

The petition should be granted. An order has been entered accordingly.

All concur.

Petition of WESTCHESTER MOTOR TRANSFER COMPANY, Inc., under chapter 667, laws of 1915, for a certificate of public convenience and necessity for the operation of a stage route by auto buses in the city of White Plains, it being also proposed that the route shall be operated to the incorporated villages of Port Chester and Rye, and to Rye Beach. Joint Petition of WESTCHESTER MOTOR TRANSFER COMPANY, INC., and LOUIS KASS as to assignment of certificate. [Case No. 6724.]

Consent to assignment of certificate of auto bus route refused where the real parties in interest, as shown by the evidence, have not received the consent of the municipal authorities and have not made the application for the assignment.

Decided October 9, 1919.

Appearances:

Joseph L. Glover, Realty Building, White Plains, for the applicant.

Strang & Taylor (by Mr. Taylor) and *John J. Hughes*, White Plains, for John H. Calhoun.

Eugene F. McKinley, White Plains, for The Westchester Street Railroad Company.

Meyer N. Finkelstein, White Plains, in person.

FENNELL, Commissioner:

This is a joint petition of the Westchester Motor Transfer Company, Inc., and Louis Kass to permit the assignment from the former to the latter of a certificate of convenience and necessity for the operation of an auto bus route granted April 1, 1919. The certificate covers a route in the city of White Plains. The route also extends to the villages of Port Chester, Rye, and Rye Beach.

The petition states that the company desires to dispose of its said motor bus route except that the company shall enjoy

the right to operate "through" buses from Hastings to and through White Plains to Port Chester, Rye, and Rye Beach.

The hearing on the original application of the company for a certificate of convenience and necessity was held February 17, 1919. Subsequent to the date of the hearing but prior to the granting of the certificate of public convenience and necessity the company and Kass entered into an agreement dated March 1, 1919, to assign such certificate, if granted, to Louis Kass.

On or very shortly prior to February 8, 1919, Louis Kass resigned the vice-presidency of the company and also sold and transferred his stock therein. On the hearing, February 17, 1919, he testified that he was vice-president of the company. Subsequently he bought an auto bus and has been operating on the route in question as owner although claiming to be operating under the certificate as agent of the company. It also appears that he is not at present sole owner of the auto bus which he is operating, but that one Glass is part owner and partner with him in such operation. The consent from the City of White Plains runs to Kass alone.

If Messrs. Kass and Glass desire a certificate they should make a new application, in the names of the real parties in interest, to the City of White Plains, and then petition the Commission for a certificate of convenience and necessity. This whole transaction seems to be one of trading in certificates rather than of building up a sound transportation business.

The Commission should refuse its consent to the assignment of this certificate to Louis Kass.

An order has been made accordingly.

All concur.

In the Matter of the Complaint of LOUIS P. FUHRMANN,
INDIVIDUALLY AND AS MAYOR OF THE CITY OF BUFFALO,
against INTERNATIONAL RAILWAY COMPANY as to passenger
fares in Buffalo. [Case No. 5825.]

Where a street surface railroad company which is operating in the streets of a city by virtue of various consents which have been granted from time to time by the local authorities, pursuant to powers granted to them by the Legislature, enters into a written agreement with the municipality, which is afterward ratified by the Legislature, by the terms of which among other things the fare to be charged is fixed at five cents, subject to a proviso that nothing in the contract shall be construed to prevent the Legislature regulating the fare,

Held, that operation pursuant to the terms of such agreement precludes any consideration of what is known as going value, in a proceeding before the Public Service Commission wherein the power of regulation so reserved to the Legislature is invoked.

Decided October 21, 1919.

Appearances:

William S. Rann, Corporation Counsel, and *George E. Pierce* and *Andrew P. Ronan*, Assistants Corporation Counsel, for the City of Buffalo.

H. A. Zimmermann, Buffalo, for the Town of Tonawanda.

Penney, Killeen & Nye (by *Thomas Penney* and *Henry W. Killeen*), Buffalo, and *Morton G. Bogue*, 52 William street, New York city, for the International Railway Company.

HILL, Chairman:

In December, 1916, the local authorities of the City of Buffalo filed with this Commission a complaint alleging that the five cent fare collected by the International Railway Company for passenger transportation over its lines within the city of Buffalo was excessive, unjust, and unreasonable, and praying that the same be reduced. Thereupon the railway company began suit in the Supreme Court to

restrain action upon the complaint, upon the ground that by virtue of the provisions of the so called Milburn agreement, which fixed the five cent rate, the Commission was without power to lower the rate. The complaint was not pressed further at that time and the court proceedings instituted by the company were held in abeyance. The war came on and the operating expenses of the company were very greatly increased, and in 1918 it discontinued its court proceedings, and on September 16th of that year filed an answer to the city's complaint which was still pending before the Commission, in which it alleged that the five cent fare was unreasonably and unjustly low, and asked that the Commission determine a just and reasonable rate of fare. Thereupon the question of the power of the Commission to regulate the rate was presented to the Supreme Court, reaching the Court of Appeals on review, and a final determination was made by the latter court upholding the power of the Commission by virtue of the reserved power of the legislature to regulate the fare which was embodied in one of the provisions of the Milburn agreement. Hearings were then held by the Commission upon the merits, evidence taken, briefs filed, and it is now the duty of the Commission to determine a just and reasonable rate.

THE MILBURN AGREEMENT

Since January 1, 1892, the railway within the city of Buffalo has been operated in conformity to the provisions of a contract between the City of Buffalo and certain predecessor companies of the International Railway Company, which is commonly known as the Milburn agreement. The binding quality of this contract is not questioned by either the city or the company. It was entered into upon substantial considerations moving between the parties. It was approved by the legislature and has been accepted by the present company. A five cent fare was fixed to be charged within the city of Buffalo subject only to the proviso that nothing in the contract should be considered to prevent the

legislature from regulating the fare in question. Pursuant to this last mentioned provision the Commission is now, as the agent of the legislature, undertaking such regulation, the Court of Appeals having determined that it has power so to do as above stated (*Matter of International Railway Co. v. P. S. Comm.*, 226 N. Y. 474).

VALUATION

As a basis of such determination it is requisite that a valuation of the company's property within the city of Buffalo devoted to the public service be first fixed upon. This we have done, and have arrived at the figure of \$18,820,606.38 as the value of such property, both tangible and intangible, including \$882,000 for working capital. This sum is based on the estimated and assumed actual cost of the property in place as the expenditure was made from time to time, including an allowance of about \$1,200,000 for intangibles or overheads. Table A following shows the calculation by which this result was reached.

As shown in the table, we have rejected from the valuation the item of \$12,000,000 and upward carried in the company's accounts under the heading of "Other Intangible Property to be Amortized."

The figure adopted represents undepreciated costs. While undoubtedly depreciation exists, no direct evidence was given to indicate its amount; and the questions whether actual investment or reproduction value, and whether with or without depreciation, were not discussed by the parties, and in view of the fact that the valuation adopted is in a sense tentative, we will not at this time attempt to determine them. The rate which will be permitted is for a limited period only, and remains within the power of the Commission to further alter and adjust. For the purposes of the present determination we will therefore adhere to the figure stated.

The case has been presented not with a view on the part

of the city or the company to obtaining at this time a final and binding determination as to the value of the property devoted to the public service. It was apparently assumed by both sides that a figure could be arrived at without great controversy which would afford a sufficient basis for the immediate purposes of this case and which would be open to further inquiry in any future consideration of rates. Accordingly, there was little if any discussion or contention by the parties as to the principles to be applied. The Commission will treat the case accordingly, and the valuation which it will adopt as a basis for return, and the concepts upon which the same is based, will be considered to be binding only for the purposes of the present determination and not necessarily in any future consideration of the rate. At the same time, the Commission has attempted to reach a valuation which in its opinion will at least approximate a correct figure.

TABLE A

Valuation of the Physical Property and Related Intangibles of the Buffalo City Lines as of December 31, 1918.

<i>All Lines:</i>	
Total fixed capital as of June 30, 1915.....	\$38,374,866.33
Less other intangible capital to be amortized.....	12,651,500.00
	<hr/> *\$25,723,366.33
<i>Buffalo City Lines:</i>	
Reported to represent 63% of the total valuation: therefore, 63% of \$25,723,366.33 as of June 30, 1915, equals.....	\$16,205,720.79
Plus additions to fixed capital from July 1, 1915, to December 31, 1918.. and "New Line".....	2,244,234.00 17,000.00
Total fixed capital applicable to Buffalo city lines as of December 31, 1918.....	<hr/> \$18,466,954.79
Less reserve for depreciation, 63% of reported reserve of \$838,648.28 for all lines.....	528,348.41
Valuation of tangible and related intangible property of the International Railway Company in the city of Buffalo as of December 31, 1918....	<hr/> \$17,938,606.38
Plus allowance for working capital.....	882,000.00
Amount upon which to compute return.....	<hr/> \$18,820,606.38

* This item also includes intangible value to cover engineering and superintendence, miscellaneous construction expenditures, and interest during construction, amounting to approximately \$1,900,000.

It will be observed that we have adopted in substance the costs appearing upon the company's books, the entries having been made as the result of the Commission's examination made in 1915 and 1916. The end then sought was to obtain as close an approximation as possible to actual cost,

and an allowance of about \$1,900,000 for the intangible items of engineering and superintendence, miscellaneous construction expenditures, and interest during construction, was made by the Commission. This we have included. We have excluded the large item of "Other Intangible Capital to be Amortized," \$12,651,500, which was apparently allowed to stand in order to balance the account. This was directed to be amortized, not from earnings but from income. The records show that at that time the Commission was urged, but refused, to allow any part of this item to be carried as "Going Value".

Going value, as recognized by the laws of this state, seems to be limited to expenses incurred in the earlier years of the life of a utility in building up its business and not recovered from the public in the way of earnings. Aside from any bearing upon that question which the Milburn agreement may have, we do not see how any substantial amount can be claimed under this head. It would seem clear, however, that that agreement, which by its terms settled all disputes arising out of rates of fare and the giving of transfers, by the agreement to transport passengers for a fixed fare, precludes any consideration of going value antecedent to its date; and it seems equally clear that from that time forward, until the legislature assumes the regulation of the fare, the same principle must govern.

It is not the case of a maximum rate being fixed as one of the conditions of a consent to construction and operations granted by the local authorities, and it does not necessarily follow that the principle which we are applying here would be applicable to that class of cases. The distinction is pointed out in the recent decision by the Virginia Supreme Court of Appeals in the case of *Virginia Western P. Co. v. Com. ex rel. Clifton Forge*, reported 99 S. E. 723; and the *Cleveland* case, 194 U. S. 517, and the *Columbus* case, 249 U. S., rests upon the broad powers of contract given to Ohio municipalities by the legislature of that state.

The binding power of the Milburn agreement does not rest upon any constitutional or legislative grant of power to impose conditions in the consent of local authorities, but upon the fact that it is a contract between the city and the railroads based upon valuable considerations and ratified by the legislature. It fixed, not a maximum or a minimum, but the exact rate of fare, subject only to the proviso that nothing in the contract contained "shall be construed to prevent the legislature regulating the fare".

If we follow the plain intent and meaning of this contract, it seems quite obvious that the company can not, now that the power so reserved by the legislature is being exercised by the Commission, ask that any going value be taken into account for the purpose of making up possible past deficiencies of return; and conversely, that the municipality can not now be heard to require that any excessive return which may have been secured by the company during the period of operation under the rate fixed by the contract be now taken into account in fixing future rates. It would seem apparent that any such treatment of past operation would have the effect of defeating the object of the contract so far as it fixed the rate and render the contract rate heretofore charged not an actual but a nominal one.

The company, while not conceding the correctness of this view, contends that if it is adopted, the regulation by the Commission should be assumed to have its inception as of the date of the company's application for relief. That contention seems just. The investigation by the Commission, as well as its determination, may well be considered a part of the exercise of the reserved regulatory power, and will be treated accordingly.

CURRENT FINANCIAL NEEDS

The company shows the immediate need of a considerable amount to be expended for deferred maintenance which has accumulated in recent months, and urges that temporarily at least a greatly increased fare be put in effect to the end

that the immediate receipts be largely increased, which would permit of the funds being used directly to meet such expenditures, after which consideration could be given to lowering the rate. We suppose that under the broad powers of the Commission this could legally be done, but we feel strongly that every consideration of good business judgment indicates the unwisdom of such method. Nor do we consider that such a course is at all necessary to compass the end in view. The expenditures will necessarily be spread over many months, and with a moderate increase, which over a considerable period will enhance the net receipts, the company's credit will be restored proportionately. In the mercantile world, income in sight can be used in the way of credit with practically as good effect as cash in hand; while on the other hand, violent fluctuations in the rates of fare so surely tend to disrupt traffic that such a course would be very likely to defeat entirely the object to be attained. Fortunately, in this respect the Commission is clothed with broad discretion, and this suggestion meets with its disapproval.

REVENUE REQUIRED FOR 8 PER CENT RETURN

Using as a basis upon which to compute the return to which the company is entitled the figure of \$18,820,606.38, and assuming as rate of return 8 per cent, we reach the sum of \$1,305,648.51, and crediting to this requirement the return which we estimate will be realized upon the present rate of fare, namely \$363,059.05, we find a required balance to be secured from increased fares of \$1,142,589.46.

The Commission estimates that with a 7 cent cash fare and a ticket rate of $6\frac{1}{4}$ cents (four tickets for 25 cents), an average fare of about $6\frac{1}{2}$ cents will be realized. We assume there will be a falling off of 9 per cent in traffic. This is necessarily speculative, and we have no sure measure by which to determine what the falling off will be. Upon this calculation we realize a gain of approximately \$1,200,000, thus making up somewhat more than the total assumed

required return. Table C shows the calculation supporting this result.

Table D gives a comparison of the reported main track mileage, bonded debt, and stock issues per mile of the larger traction systems in the Second Public Service Commission District. In such a comparison allowance must be made for the possibility of varying conditions.

GENERAL CONDITION

The International Railway Company has a bonded debt as of December 31, 1918, of \$28,370,582, in addition to which it has outstanding capital stock of \$16,707,500. We find the company in an insolvent condition, unable to meet its current liabilities out of earnings or surplus. This condition may be ascribed to a top-heavy financial structure, and the recent great increase in operating expenses with no corresponding increase in revenues, resulting in a large accumulation of deferred liability and loss of credit.

All of the capital stock of the International Railway Company having come into the ownership of a New Jersey corporation known as the International Traction Company, that company performed the operation known as "financing the equity": that is to say, it pledged the stock with other collateral in trust, and issued against it bonds bearing 4 per cent interest, payable semiannually. The traction company has defaulted in the interest on these bonds. This transaction has been very widely criticized, and is believed by many to have been the cause of most of the financial difficulties which have attended the railway company. It may not be amiss for the Commission to point out that this method of control of the International Railway Company includes some highly objectionable features. In the first place, the bonding of the entire equity of any property, public utility or otherwise, is clearly an element of great weakness. A company which can not forego a dividend without precipitating a default in the payment of interest on an outstanding bond issue is embarrassed the moment its income

is diminished to any considerable degree by the ordinary fluctuations of business. It is like a merchant doing business with no surplus or reserve over and above his debts. Another objection equally vital is that should the property thus pledged for any reason become or prove to be less valuable than has been estimated, serious embarrassment ensues and the company becomes bankrupt.

Another objectionable feature of such financial arrangements is reflected in the evidence, where it is shown that during the year 1918 the traction company purchased a coal mine for \$150,000 and re-sold it to the railway company for double this amount within a few months after the purchase. No evidence was given to show any increase in value between the time of the purchase and the time of the sale. We have been unable to find, however, that this has been a common practice between the companies. It appears that all of the materials used in operation of the railway company are purchased in the open market and not through the traction company or any subsidiary interests, nor is there any evidence that in any other instance the railway company has been thus exploited.

But it further appears that since March 1, 1918, when the last dividend on the railway stock was paid by that company to the traction company, the former has advanced to the latter in cash upward of \$160,000 on open account which remains unpaid. This transaction occurred while the railway company was in the courts seeking increased revenues alleged to be needed to forestall its own insolvency.

It is too obvious to be questioned, that the profit of \$150,000 paid the traction company on the turnover of the coal mine, and the cash advance made as above stated, were improper exploitations of the railway company's treasury for the benefit of the embarrassed traction company; and the question is thus forcibly presented to the Commission whether or not any increased revenues which may be provided by an increase in fare will not be similarly withdrawn

and thus diverted from the expenditures for maintenances, proper operation, and payment of interest on the outstanding bonded debt of the railway company.

It is urged by the learned counsel for the railway company that the relations between these corporations are not the subject of the jurisdiction of the Commission and that it has no right to inquire into or consider them. But the Public Service Commissions Law gives the Commission general supervision not only of the railway company (section 45), but also of a corporation or person "owning or holding a majority of the stock of a common carrier in respect of the relations between such common carrier . . . and such owners or holders in so far as such relations arise from or by reason of such ownership or holding of stock thereof or the receipt or holding of any money or property thereof or from or by reason of any contract between them" (section 5). This language would seem to need no interpretation, and fully answers the contention of the counsel in this regard.

The Commission is of the opinion that the proposed relief should be extended only in such manner as to remain within control. While the beneficial owners of the property are entitled to a reasonable rate of fare, the interest of the public in the preservation of the railroad so that satisfactory service shall be given at reasonable rates is equally involved. Unless the property is maintained and conserved, neglect in these respects will later on be reflected in a breakdown of service. It will be idle to extend relief to the railway company if its added receipts, instead of going to restore its credit and maintain its property, are to be diverted to the traction company in the form of improper advances.

It is apparent that the increased revenues will not be properly available for the purpose of restoring the credit of the traction company. It appears that the withdrawal of funds above referred to took place when the railway company was approaching default on its own interest and for all practical

purposes in an insolvent condition. These funds should be promptly restored.

It has been intimated to the Commission that plans are on foot to remedy the objectionable conditions above pointed out by a reorganization of the corporate structure which will eliminate the traction company and place the railway company on a sound financial basis with the beneficial owners of the equity in direct control. This is highly desirable, and the Commission strongly recommends it.

The order permitting an increase in rates will be made effective for a period not to exceed six months, beginning not earlier than November 1, 1919. At the end of that time the conditions may be very materially changed. On a proper showing, if necessary, the period can then on application be extended, or such other order be made as the circumstances may seem to require.

The order will also contain such conditions as will tend to conserve the revenues of the company for its proper corporate purposes. The terms of the order will be settled by the Chairman.

TABLE B

Computations Used in Arriving at Estimated Gross Income of the Buffalo City Lines.

<i>Buffalo City Lines, per Company's books:</i>		
Operating revenues January 1 to June 30, 1919.....		\$3,363,572.25
Revenue deductions for the same period:		
Maintenance of way and structures.....	\$280,510.76	
Maintenance of equipment.....	324,871.09	
Traffic expenses.....	14,765.00	
Conducting transportation.....	1,530,240.39	
Accidents and damages.....	*481,784.88	
General law expenses.....	19,503.31	
Other general expenses.....	171,059.81	
Taxes.....	231,061.87	
Rentals.....	217.50	
Depreciation, as per books.....	5,222.30	
Total revenue deductions.....		3,009,236.91
Gross income for the first six months of the year 1919.....		\$354,335.34
Gross income for entire year, \$354,335.34 x 2 =.....		\$708,670.68
<i>Buffalo City Lines, as adjusted by the Commission:</i>		
Operating revenues January 1 to December 31, 1919.....		\$6,727,144.50
Revenue deductions January 1 to December 31, 1919:		
Maintenance of way and structures.....	\$461,021.52	
Maintenance of equipment.....	649,742.18	
Traffic expenses.....	29,530.00	
Conducting transportation.....	3,060,480.78	
Accidents and damages.....	*679,625.99	
General law expenses.....	39,006.62	
Other general expenses.....	342,119.62	
Taxes.....	462,123.74	
Rentals.....	435.00	
Depreciation.....	†640,000.00	
		6,364,065.45
Estimated gross income for the year 1919 at the five cent rate, after allowing for operating expenses, taxes, and depreciation.....		\$363,059.05

* This item is entered for the six months at \$481,784.88, or at the rate of \$963,569.76 for the year. The corresponding item for several preceding years was as follows: 1914, \$315,377; 1915, \$293,103; 1917, \$473,235; 1918, \$679,625. The large and rapid increases in this item are not very clearly explained; evidently there is an accumulation in the later years of liabilities deferred. If we allow as a proper allocation to the year 1919 the same amount charged in 1918, we will probably be charging the current year with its full proportion. The item will be adjusted accordingly.

† The depreciable property of the International Railway in the city of Buffalo is assumed for the purposes of this estimate to be \$16,000,000, which at the rate of 4 per cent reflects the amount applicable to depreciation during the year 1919, \$640,000.

TABLE C

Estimate of Operating Results Under the Increased Rates, Period of One Year.

<i>Buffalo City Lines:</i>		
New Rates: Cash fare, 7 cents per passenger; ticket sales, 4 tickets for 25 cents: estimated to yield 6½ cents per passenger:		
Number of passengers estimated to be carried at 5 cents per passenger.....	132,524,145	
Estimated loss of passengers due to fare increase, 9% of above.....	11,927,173	
Estimated number of passengers at new rate.....	120,596,972	
Estimated revenue per passenger at new rate.....	.065	\$7,838,808.18
Compared with the passenger receipts from 132,524,145 passengers estimated to be carried at 5 cents.....		6,626,207.25
Estimated increase in passenger revenue.....		\$1,212,595.93
which added to the estimated gross income for the year 1919, after allowing for operating expenses, taxes, and depreciation as shown in Table B.....		363,059.05
Represents the estimated gross income for one year at the new rate.....		\$1,575,654.98

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Return based upon valuation:

Total fixed capital and related intangibles, such as engineering and superintendence, miscellaneous construction expenses, and interest during construction, as of December 31, 1918.....	\$18,466,954.70
Less reported reserve for depreciation applicable to Buffalo City Lines.....	538,348.41

Valuation of the tangible and related intangible property of the International Railway Company in the city of Buffalo as of December 31, 1918.....	\$17,938,606.38
Plus allowance for working capital.....	882,000.00

Amount upon which to compute return, as shown in Table A.....	\$18,820,606.38	
Return at 8% on above valuation.....		\$1,505,648.51

Resulting in an excess of gross income of.....	\$70,006.47
over the amount believed to be a fair return upon the valuation of the company's property.	

TABLE D

Book Cost Per Mile of Track of Electric Railways Named.

Company	Main track mileage	Fixed capital	Mortgage bonds	Stocks
	Miles	Dollars	Dollars	Dollars
New York State Railways, as of Dec. 30, 1917.....				
Authority: Moody, 1918.....	416.57	50,231,709	24,693,000	23,814,900
Per mile.....		120,584	59,277	57,169
United Traction Co., as of Dec. 31, 1918.....				
Authority: P. S. C. Report.....	103.3	11,730,133	6,500,000	12,500,000
Per mile.....		118,564	62,923	121,007
Schenectady Railway Co., as of Dec. 31, 1918.....				
Authority: P. S. C. Report.....	134.4	7,353,084	2,676,000	4,100,000
Per mile.....		54,710	19,911	30,506
Yonkers Railroad Co., as of Dec. 31, 1918.....				
Authority: P. S. C. Report.....	45.45	3,805,889	1,000,000	1,000,000
Per mile.....		83,737	22,002	22,002
Binghamton Railroad Co., as of Dec. 31, 1918.....				
Authority: P. S. C. Report.....	45.53	3,810,220	2,487,000	978,995
Per mile.....		82,138	54,266	21,361
International Railway Co., all lines, as of Dec. 31, 1918.....				
Authority: P. S. C. Report.....	404.28	44,495,405	28,370,582	16,707,500
Per mile.....		110,061	70,175	41,327
International Railway Co., Buffalo lines, as of Dec. 31, 1918.....				
Per mile.....	208.00	*28,032,105	*17,873,466	*10,525,725
		124,770	85,930	50,604

* 63 per cent of total.

Irvine, Fennell, and Kellogg, Commissioners, concur, the latter filing memorandum; Barhite, Commissioner, concurs in result, filing memorandum.

KELLOGG, Commissioner, concurring:

I concur in the opinion of the Chairman; I approve of this increase in fare, however, only as a temporary expe-

dient, and approve of the proposed order only because it is extremely limited as to time.

An important factor in the computation is the assumed decrease of travel resultant from the increase in fare. This, I think, is largely problematical, and the increase of rate proposed is justified only upon the assumption that it will occur. Some decrease is usually experienced in such cases, but in most instances the former volume of travel is sooner or later restored, and I believe in a growing city like Buffalo whatever loss of travel may follow the increase in fare will soon be overcome.

If it were not for this probable decrease in travel, a flat fare of 6 cents would, under the computation set forth in the Chairman's opinion, be adequate.

Unless other elements enter to change the situation in the meantime, it seems to me that a 6 cent fare would be adequate and sufficient in fairness both to the carrier and the public, when whatever shrinkage in travel following the proposed rate increase is overcome.

BARNITH, *Commissioner*, concurring in result:

I heartily concur in the result reached by the Chairman in this case. The figures presented as a matter of arithmetic might justify a higher rate of fare than the one which he recommends. But experience has taught that an increase in a street railway fare usually is followed by a decrease in patronage. While there are no accurate statistics of general application, the experiments which have been made would indicate that an increase of each cent in a rate of fare is followed by at least 7 per cent decrease in the number of passengers carried. By limiting the effect of the order which the Commission may make to six months, a sufficiently long time will have passed to enable the Commission at the end of that time to take any further action which the operation of the road, under the rate named, may justify.

There is, however, one conclusion reached in the prevail-

ing opinion to which I can not give my assent. That conclusion, briefly stated, is to the effect that in fixing a rate this Commission can not provide for any deficiency which may have accrued while the road was operating under the Milburn agreement; that the regulatory power of the Commission must have its inception as of the date of the company's application for relief; and that provision can only be made for the future from that date and not for the past. If that contention be true, the power of the state to provide for the well being and the prosperity of street railway companies is very meager. It should be remembered that statutes intended to regulate the rates of our public utility corporations are really intended for the benefit of the public and must be liberally construed in the interest of the public. (*Beekman v. Third Avenue R. R. Co.*, 153 N. Y. 144, at p. 160. *People ex rel. Jackson v. Potter*, 47 N. Y. 375, at p. 382.)

No argument is needed to show that street railways in our modern life are an absolute necessity; no argument is needed to show that they can not exist without sufficient income to pay the expense of operation, and their only ultimate source of income is the fares they receive from their passengers. They may temporarily borrow money, but that money must be repaid. If relief is not granted at some time, a stoppage of service must result and the public suffers. If this Commission can not grant relief which may provide for past debts however honestly incurred, then to provide a relief which only takes care of the future simply puts off the day of final dissolution. The officials of a company may know that the income received does not pay the expenses of operation and yet may believe that increased business in the future will care for the increasing shortage of money; if subsequent conditions do not justify their hopes there is no way to rectify an honest belief.

I do not believe that the statute under which the Commission acts should bear so narrow an interpretation as to

exclude a consideration of the conditions to which attention has been called. Provision is made for the determination of a "just and reasonable rate". Is a rate just and reasonable which only provides for the future and leaves no way for the company to pay its past debts, although these debts may have been honestly incurred for the benefit of the public in furnishing service?

The recent decision of the Court of Appeals did not bring into existence the right of this Commission to fix a just and reasonable rate: that decision simply interpreted and placed beyond question the right which existed under the law and the conditions which governed the actions of the parties.

To hold that because the city and the railroad had entered into an agreement prevents the state from fixing a just and reasonable rate, is to ignore the police power of the state, which is preëminent and can not be controlled by agreements or statutes.

Joint Petition of KATE E. SMITH as administratrix, and SOLSVILLE ELECTRIC LIGHT & POWER COMPANY, INCORPORATED, under section 70, Public Service Commissions Law, for consent to the transfer of the franchise, works, and system of the George R. Smith electric plant in Madison county to said company. [Case No. 6926.]

Petition of SOLSVILLE ELECTRIC LIGHT & POWER COMPANY, INCORPORATED, under sections 68 and 69, Public Service Commissions Law, for approval of construction and exercise of franchises in Madison county; for authority to issue \$10,000 common capital stock; for authority to make a first mortgage for \$20,000, and to issue now \$20,000 in 6 per cent gold bonds to be secured thereby. [Case No. 6930.]

As between a public utility and the public, capitalization should be allowed to the extent of the investment less depreciation. As between the buyer and the seller of such utility, the market price naturally measures the value. Where a question may be raised between buyer and seller because these valuations differ the Court and not the Commission has jurisdiction.

Decided October 30, 1919.

Appearances:

Louis F. Joerissen, Solsville, representing the applicants.

FENNELL, Commissioner:

The above cases, taken together, include the petition for consent to transfer the franchise, works and system of the George R. Smith electric plant to the Solsville Electric Light & Power Company, Incorporated, and the petition of said company for approval of construction and exercise of franchises, and for authority to issue \$10,000 common capital stock, authority to make a first mortgage for \$20,000, and to issue now 6 per cent gold bonds in the amount of \$20,000 to be secured by said mortgage.

George R. Smith, in his lifetime, owned and operated a power house and plant in the hamlet of Solsville, town of Madison, Madison county, that furnished electric current to the public there and in the town of Madison, including the hamlet of Bouckville and the incorporated village of Madison, both of which are near Solsville and in the town of Madison. After his death, Kate E. Smith, as administratrix of his estate, made a contract to sell the plant to Louis F. Joerissen, president of said company, which contract he has assigned to the company. The company was incorporated on the 6th day of May, 1919. It appears that the purchase price agreed to be paid by Joerissen to the administratrix was \$20,000. Schedules were filed claiming to show itemized cost and estimate values amounting to \$37,370.75. These schedules have been checked by the Commission's division of light, heat, and power, and after being so checked and depreciation being calculated thereon the division finds the present value, based upon the capital actually expended, less depreciation, to be \$29,453.16. Adding an allowance of \$546.84 for working capital, produces \$30,000, thus equaling the amount of the proposed securities.

The only franchise held by said Smith was one from the incorporated Village of Madison. It is proposed to assign this franchise, without consideration, to said company. Said company was granted a franchise by the town board of Madison May 17, 1919.

The question is clean-cut. Is it the original investment less depreciation, in the items that constitute a public utility, that measures the proper basis for capitalization, or is it the actual investment or purchase price paid by the present owner that should be the basis of such capitalization? It seems clear that Mr. Smith, the former owner, or his widow, could have shown in a rate case a value of \$30,000 and been entitled to a return on that amount. If we look for the investment of the present owner we find it to be \$20,000. That sale price may have been a fair measure of the market value.

However, as the actual investment less depreciation reaches \$30,000, and as such amount would be a proper present rate base, it seems that capitalization to the extent of \$30,000,—\$20,000 of bonds and \$10,000 of common stock,—should be allowed. As between this utility and the public any other figure would be less than fair to the utility. As between the administratrix and her grantee, this petitioner, a different rule may apply. Had she asked for capitalization to the extent of \$30,000, it would have been allowed. As to whether or not she could have sold the property in the market for that figure is another matter.

As between the public and the utility we should fix capitalization at \$30,000. As to the transaction between Mrs. Smith, as administratrix, and Mr. Joerissen we are without jurisdiction, but they have the courts open to them to determine their respective rights.

An order should be made consenting to the transfer of the franchise, works and system of the said George R. Smith electric plant to the Solsville Electric Light & Power Company, Incorporated; approving of construction and exercise of franchises in Madison county; authorizing the issue of \$10,000 common capital stock; authorizing the making of a first mortgage for \$20,000 and the issue of 6 per cent gold bonds in the amount of \$20,000 under same.

An order has been made accordingly.

All concur.

In the Matter of the Complaint of the VILLAGE OF GOSHEN
against WALLKILL TRANSIT COMPANY as to proposed
increase in passenger fare. [Case No. 6905.]

1. A public service corporation has the positive right to file schedules giving notice of a proposed change in rates without any action on the part of the Commission unless the rates affected have theretofore been fixed and are effective under an order of the Commission, and such filing is no evidence that the Commission has approved the rates named in the schedule.

2. Where a franchise granted by a municipality to a public service corporation contains an agreement naming the rates which must be charged for services rendered by the corporation, but reserves the right to the Legislature to regulate or reduce such rate, this Commission has jurisdiction to increase or decrease the rate named in the schedule.

Decided November 6, 1919.

Appearances:

Philip A. Rorty, Esq., Corporation Counsel, for the Village of Goshen.

Herbert Royce, Esq., attorney for the Wallkill Transit Company.

BARHITE, Commissioner:

The Wallkill Transit Company, operating a street surface railroad which extends within the city of Middletown, the village of Goshen, and between the two municipalities, has filed with this Commission a proposed new schedule of increased rates which names a fifteen cent fare between any point in the village to any point in the city in either direction. The Village of Goshen now brings this proceeding against the traction company, and alleges that it objects to the jurisdiction of this Commission to grant the increase of fare or to approve the schedule in the particular named in the petition upon the ground that in a franchise granted to the predecessor in interest of the traction company by the

village in 1894, it was provided that a single fare of only ten cents should be charged for transportation between any point in the village of Goshen and any point in the city of Middletown in either direction; that the said franchise is a valid and enforceable contract, and that the defendant company can not legally increase its fare, and that this Commission has no jurisdiction to authorize and approve the increase; and the village asks that the Commission refuse jurisdiction of the application, and that said proceeding be dismissed.

The company, in its answer, denies that the franchise to which reference is made deprives the Public Service Commission of authority to regulate the rate of fare between the village of Goshen and the city of Middletown, and then makes allegations with regard to its financial condition which it is claimed justify the increased rate.

If the allegations of the petition that the Commission is without authority to authorize and approve an increase of fare or to consider this application, coupled with the demand that the Commission refuse jurisdiction of the application and that said proceeding be dismissed, refer to the proceedings of the company in filing a schedule and putting into effect increased fares, the implication contained in the petition is founded on error.

The theory seems to be quite prevalent that when a public service corporation files a new schedule of rates it must be done with the consent and approval of this Commission and that such filing is evidence that the Commission has approved the rates it contains. Such belief is not founded upon the statutes. Schedules affecting rates are filed as a positive right under the law, and they go into effect within a certain prescribed time without any action on the part of the Commission, unless the rates affected have theretofore been fixed and are effective under an order of the Commission.

The only control that the Commission has over the schedules, except in the case of common carriers, to suspend their

effect for a limited period, is that after they are filed and a reasonable notice has been given to the company filing the schedules, and a hearing has been had, the Commission may make such changes in the schedules as may be warranted by the evidence.

At the hearing it was stipulated by the parties that the only question then to be presented to the Commission was as to the jurisdiction of the Commission to make a determination as to the validity of the new rate in view of the franchise agreement between the Village of Goshen and the company.

The Village of Goshen claims that under the authority of *Matter of Quinby v. Public Service Commission*, 223 N. Y. 244, commonly called the "Quinby case," this Commission has no authority to grant increased fares to the defendant company.

It may be said that if the Quinby case controls the disposition of this matter, the Commission has not only no authority to grant increased fares, but also has no authority to decrease any fares now in effect. The case in question was decided not upon a lack of power in the Legislature to disregard a franchise agreement, which question was left open, but upon the failure of the Legislature to grant to the Public Service Commission authority to fix fares in the face of a positive agreement as to such fares made between the municipality and the company. The case decided arose over a question of increasing fares, but the reasoning of the court is equally applicable to a demand to decrease fares. In the opinion of the court, pages 263-264, in speaking of franchise agreements, the court says: "As it has often been held in connections other than that of legislative powers over them that such agreements are valid, it may well be inferred that the legislature excluded them from consideration by failure to mention them and that it has made no attempt to turn them over to the Public Service Commission for revision."

In the Quinby case, the court had before it for considera-

tion a contract made between the City of Rochester and the street railway company, which concerned fares in the public streets of that municipality alone. Here the facts are different: The Wallkill Transit Company is an interurban road. In the village of Goshen it passes partly over the public streets and partly over private right of way; it then passes through two townships on the highway and over private right of way until it reaches the city of Middletown. There are about four miles of track in that city, the greater portion of which is in the public streets and a small portion on private right of way. The franchise granted by the Village of Goshen does not attempt to limit the fare within the village, but provides that but a single fare of ten cents shall be charged for transportation from any point in the village of Goshen to or from any point in the city of Middletown.

In the Quinby case, the basis of the decision was a legal binding contract made under authority derived from section 18 of Article III of the State Constitution. In the case at bar the contract was not made under and pursuant to the provisions of the constitution. The constitution provides that no law shall authorize the construction of a street railroad which does not provide for the consent of the local authorities having control of that portion of the street upon which it is proposed to construct or operate the road. The larger part of the road of the Wallkill Transit Company is not and can not be under the control of the local authorities of the Town of Goshen.

The distinction between an urban road passing entirely over public streets like the one under consideration in the Quinby case, and an interurban road running both in public streets and on private right of way like the one with which we are concerned in this case, is well pointed out by Mr. Justice Hinman in the *Matter of Koehn v. Public Service Commission*, 107 Misc. 151. In fact it appears from later decisions of the Court of Appeals in which the Quinby case is discussed that it is intended to limit the decision in that

case strictly to the facts then before the court. See *People ex rel. Village of South Glens Falls v. Public Service Commission*, 225 N. Y. 216; *Matter of International Railway Company v. Public Service Commission*, 226 N. Y. 474.

The decision of the case under consideration is controlled rather by the International Railway case, *supra*, than by the Quinby case. In the International Railway case this Commission was called upon to regulate the rate of fare charged by the company named within the city of Buffalo which had been fixed at five cents in a franchise granted by the city to one of the predecessors in interest of the International Company under what is known as the "Milburn Agreement". This agreement contains a clause in the following words: "Nothing in this contract contained shall be construed to prevent the legislature from regulating the fares of said companies, or either of them," and the court in construing this agreement said: "This is a case where the local authorities, in imposing a condition, have consented that the legislature may change it, and have thus renounced the right of forfeiture or revocation that might otherwise be theirs"; and again, "In the light of this provision, amendment by legislation must be held to have been as much within the contemplation of the parties as amendment by agreement. . . . There is nothing to show that we have no right to assume that the reservation of the power of the State was for the benefit of one of the parties to the exclusion of the other. The power to regulate rates is the power to increase them if inadequate, just as truly as it is the power to reduce them if excessive. . . . Is there anything in the attempted distinction between regulation directly by the legislature and regulation indirectly through a commission? The Public Service Commission is the delegate of the Legislature; and regulation by the one is regulation by the other".

In the franchise granted by the Village of Goshen to the company we find this provision: "This consent is given upon the following terms and expressed conditions, to wit:

"First, This consent is given upon the expressed condition that the provisions of Art. IV of the 'Railroad Law' known and designated as Chapter 565 of the Laws of 1890, as amended and entitled 'An Act in Relation to Railroads', consisting of Chapter 39 of the General Laws, shall be complied with, etc." If we examine section 101 of the statute in question we find after a provision which names five cents as the maximum rate, these words: "The Legislature expressly reserves the right to regulate and reduce the rate of fare on any railroad constructed and operated wholly or in part under such Chapter or under the provisions of this Article".

Using the thought of the Court of Appeals in the International Railway case, *supra*, "To regulate" gives the power to increase as well as decrease, and regulation by this Commission is regulation by the Legislature. The parties made the statute a part of their agreement. They fixed the fare *pro tempore*, but they plainly agreed to allow the Legislature to change the rate when that body elected so to do.

Counsel for the Village of Goshen in his argument before the sitting Commissioner made the point that the Legislature has no power to interfere with the contract made between the Village of Goshen and the railroad company. In view of the character of the contract between the village and the company which incorporates a statute which expressly provides that the Legislature may regulate the rate of fare, it is unnecessary to discuss at length that contention. The answer, in short, is that by assuming jurisdiction in this case the Commission does not contravene the terms of the franchise but upholds and complies with its terms. To again quote from the International case, "Municipality and railroad have joined in the declaration that the rate fixed by their agreement shall be, not final, but provisional. It is to be subject, in case of need, to reëxamination and readjustment by the agents of the State. The need that was foreseen as possible has arisen. In upholding the jurisdiction

of the Commission to deal with it, we do not override the conditions of the franchise. We heed and enforce them. There are times when the police power modifies a contract in spite of the intention of those who have contracted. Here its action is in aid of their intention. The covenant which limits rates is a condition of the consent, but only in equal measure with the covenant preserving and defining the power of amendment.

"So far as the power of the Commission is concerned, the result is the same as if no condition had been imposed at all."

The Commission must hold that it has jurisdiction to decide this case upon the merits.

Commissioners Hill, Irvine, and Fennell concur in result; Commissioner Kellogg concurs in result upon the authority of and for the reasons stated in the opinion of Mr. Justice Hinman in matter of *Koehn v. P. S. C.*, 107 Misc. 151.

In the Matter of the Complaint of PURCHASERS OF GAS IN THE INCORPORATED VILLAGE OF ALLEGANY, Cattaraugus county, *against* KEYSTONE GAS COMPANY as to increase in price of natural gas. Supplemental Complaint by the village filed in February, 1919. [Case No. 6303.]

In the Matter of the Complaint of the MAYOR OF OLEAN *against* KEYSTONE GAS COMPANY as to increase in price of natural gas furnished customers. Supplemental Complaint filed in February, 1919. [Case No. 6307.]

Under particular existing circumstances a rate to consumers of 45 cents net a thousand cubic feet for natural gas held to be not unreasonable.

Decided November 6, 1919.

Appearances:

John K. Ward, attorney, City of Olean, for complainant.

Allen J. Hastings, Olean, for respondent.

IRVINE, Commissioner:

The Keystone Gas Company supplies natural gas in a part of the city of Olean, the village of Allegany, and to a few customers in the town of Allegany. Early in 1918 the price of gas was increased from thirty-five cents per thousand cubic feet to forty-two cents per thousand cubic feet with a discount of two cents for prompt payment. Complaints were filed against this increase by the City of Olean and the Village of Allegany, but the complaints were not pressed, and November 26, 1918, the cases were closed without prejudice. Subsequently a supplemental complaint was served charging that the rate had been again increased to forty-seven cents a thousand cubic feet with a discount of two cents for prompt payment. The cases were then reopened and hearings were held.

The Keystone Gas Company is a Pennsylvania corporation which has supplied the communities concerned for many

years, but for at least thirty years it has had no producing capacity, and has of late years purchased all its gas from the Iroquois Natural Gas Company. The Iroquois Company supplies certain communities in the State of New York including the city of Buffalo. It produces a part of its gas in this State, but the greater part of its supply comes from the State of Pennsylvania, in part produced by itself and in part produced by other corporations and sold to the Iroquois Company. There is a community of interest between the Iroquois Company and the other producing companies. There is no community of interest whatsoever between the Iroquois Company and the Keystone Company. All the gas supplied to Olean and Allegany comes from Pennsylvania. The entire increase in the price to consumers in the Keystone territory is attributable to the increase in price demanded and received by the Iroquois Company from the Keystone Company. The Keystone Company proved an investment of at least \$208,000 which, after investigation by the City of Olean, remains unquestioned on the record. The assessed valuation is considerably more. The income of the Keystone Company for the year 1918 amounted to about 2.5 per cent return on this investment. As the order it is proposed to make is of a temporary character it is unnecessary to go into details of the income account. It is sufficient to say that on the whole the items of operating expense seem reasonable, and while one or two on a close investigation might be reduced the entire elimination of these would not increase the income to anything amounting to a fair return on the investment. The Iroquois Company has served notice on the Keystone Company that it will not furnish gas after January 1, 1920. The Commission knows that during the winter months its capacity to furnish gas in Buffalo and other communities is strained already, but to deprive Olean and Allegany of the supply would work a great hardship upon those communities. It is not too strong to say that such an occurrence would be a disaster. With

the diminishing supply of natural gas it is perfectly evident that all communities accustomed to its use will in the not remote future be compelled to substitute other fuel. At forty-five cents per thousand cubic feet these communities are enjoying much cheaper fuel and light than is, under present conditions, obtainable from other sources. There is no interstate regulation of the transportation of natural gas. This Commission might probably institute a proceeding to determine whether the present price charged by the Iroquois Company to the Keystone Company is reasonable, and if found unreasonable it might fix a lower price, but it could not compel the Iroquois Company to transport gas from Pennsylvania to New York at the price so fixed. The Keystone Company is not earning and can not earn an unreasonably high return at the present rate at which it must purchase its gas, and no other source of supply seems at present available. The complaints must, therefore, be dismissed, but the whole matter may be reopened on complaint of the Keystone Company, the City of Olean, the Village of Allegany, or consumers in any community served, at any time after December 1, 1919, or at such later time when the relations between the Keystone Company and the Iroquois Company for the period following the close of the present year may be determined.

All concur.

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of CONSUMERS OF GAS IN THE INCORPORATED VILLAGE OF SAG HARBOR, Long Island, *against* LONG ISLAND GAS CORPORATION as to prices charged for gas. [Case No. 6992.]

Decided November 13, 1919.

Appearances:

Charles Cunningham, Esq., and Mrs. Charles Cunningham for complainants; and *Messrs. Elmer B. Sanford, Henry R. Frost, and Hon. Martin S. Decker* for defendant.

BARHITE, Commissioner:

This proceeding is brought by a number of consumers of gas supplied by the Long Island Gas Corporation at Sag Harbor, Long Island, for the purpose of reviewing the rates charged in that village. The answer of the defendant is to the effect that the rates against which complaint is made have recently been the subject of investigation by this Commission and that by an order made on July 8, 1919, the rates charged by the defendant in the village of Sag Harbor are found to be not unreasonable or unjust but are reasonable, just, and lawful. The answer must prevail, and the issues in this case are *res judicata*.

The trustees of the village made complaint against the rates in dispute in this proceeding. Both parties were represented by counsel, and evidence was offered as to the financial condition of the company, and briefs were filed both by the trustees and by the company. After due consideration the Commission found that the prices charged by the gas company were just and reasonable and not more than allowed by law, and that they did not grant any undue

or unreasonable preference or advantage to any person, and it was provided by the order that the said rates should continue for one year after the signing of the Treaty of Peace by the United States and her Allies and by Germany. The following extract from the Opinion of the Commission will show in part the figures presented and the conclusions drawn: "In a brief submitted by the complainants they say that the statement filed by the company, while disclosing much that is open to criticism, convinces one upon examination that the company really is 'in a very bad financial condition'. Our examination leads to the same conclusion. The general balance sheet of the company on December 31, 1917, shows assets of \$227,774.27 and liabilities of \$242,549.25, a deficit of \$14,774.98. The general balance sheet for November 30, 1918, eleven months later, contains assets amounting to \$215,438 and liabilities which total \$244,347.91, representing a deficit of \$28,909.91. The revenue from operation for eleven months ended November 30, 1918, amounts to \$19,406.71. The expense of operating for the same time is \$23,041.48, leaving an actual operating deficit of \$3634.77. Adding to this amount \$10,841.19, the amount of interest and other general charges brings the total to \$14,475.96, as the shortage in the business operations of the company for the period named.

"Using as a basis the franchise rates in Sag Harbor and the new proposed rates in territory served by the company outside of Sag Harbor, the revenue of the company would have been increased \$3009.83 for the eleven months named, still leaving a deficit of \$11,466.13. Had the proposed rate been in operation for eleven months of 1918, the actual revenue would have exceeded the actual operating expenses by \$1252.05, upon the assumption that all the meters remained in service under the new rate, but there would

still be a deficit of \$9589.14 when the fixed charges are considered. It can not be disputed that the proposed scheduled rates are reasonable in amount and should be allowed to remain."

Upon the hearing in this case no evidence was offered which would tend to show that the former decision was founded on error or should be reversed or modified. In the former case the complainants were the duly chosen representatives of the Village of Sag Harbor; their contention was well presented, and the decision of the Commission should stand until the limit of the time named in its order.

All concur.

In the Matter of the Complaint of RESIDENTS OF THERESA, Jefferson county, and OTHER PLACES *against* UNITED STATES RAILROAD ADMINISTRATION, NEW YORK CENTRAL RAILROAD, asking for better passenger train service in Northern New York. [Case No. 7012.]

Decided November 18, 1919.

Appearances:

J. R. Sturtevant and *Charles H. Bulson*, Theresa, for complainants.

Purcell, Cullen & Purcell (by Francis E. Cullen), Watertown, as attorney for respondent.

KELLOGG, Commissioner:

The interlacing of the various lines composing the St. Lawrence division of the New York Central railroad presents practical difficulties in the arrangement of train schedules so as to accommodate the greatest number of prospective passengers with the least inconvenience to others.

The geographical location of the lines of this division formed by the union of what was formerly the Utica and Black River, and the Rome, Watertown and Ogdensburg railroads renders it impossible, within the limits of any reasonable service, fully to satisfy all of the patrons of the line. When changes are made to improve conditions in certain localities these changes necessarily result in added inconvenience to other localities. The best that can be done must in any event be more or less unsatisfactory to certain communities.

The only proper outcome, therefore, is for all to act in a spirit of conciliation so that while no community can entirely have its own way to the inconvenience of all others, a practical result may be obtained which will be the best possible for all under the circumstances.

The present issue arises from the complaint of certain residents on the line between Philadelphia and Ogdensburg, generally as to the train service. The particular grievance consists of a protest against the fact that persons leaving the stations north of Philadelphia on train No. 60, which leaves Ogdensburg at 6:30 a. m., can not make connections at Philadelphia for points easterly toward Massena Springs, notably Antwerp and Gouverneur. Arriving now at Philadelphia at 8:10 a. m., a passenger can not leave on the line running toward Massena Springs until 12:35 p. m.

This failure to make a reasonable connection not only discommodates passengers boarding trains at the various small stations south of Ogdensburg, but must also affect those passengers desiring to go from Ogdensburg to the substantial village of Gouverneur or to Antwerp or other stations between DeKalb Junction and Philadelphia.

Train No. 17 under the present schedule running from Watertown to Massena Springs is scheduled to leave Philadelphia at 7:45, or 25 minutes prior to the arrival of No. 60. In order to make the connection a change of timetable providing either for the acceleration of No. 60 or the delay of No. 17 must be arranged for.

Communication with the mayor of Ogdensburg discloses a very decided objection in that city to the departure of train No. 60 at any time earlier than the hour at which it now leaves, 6:30 a. m. This position seems to be reasonable; the time of departure is very early as it is, and arrangements for earlier departure should not be made if any other solution of the problem can be reached.

The other alternative to provide for this connection is to delay the departure of No. 17 from the Philadelphia junction until the arrival of No. 60. This would cause a delay of twenty-five minutes over the present operating schedule.

Such a connection was accomplished for many years prior to January 13, 1918, by starting No. 17 from Watertown at 7:35 a. m., thus permitting passengers coming from

Ogdensburg and intermediate stations on No. 60 to make the connection at Philadelphia for points toward the east.

On the date last mentioned a change in time was made causing the advertised departure of No. 17 from Watertown to be fixed at 7:05 a. m. This change followed the proceedings had before this Commission in case No. 5942, which arose out of a complaint of residents between Philadelphia and Massena Springs, urging that the train in question should leave Watertown at an earlier hour and even requesting that it leave as early as 6:20 in the morning. The application was denied by the Commission, but the order contained the following: "It is recommended that the Railroad Company give serious consideration to the subject of the complaint in connection with its next timetable revision."

This order was made in March, 1917. No change was made in either of the timetable revisions promulgated under date of July 1, 1917, September 19, 1917, or November 25, 1917, but as has been stated in the January timetable the train was made earlier and upon the hearing in this case, it was suggested in behalf of the railroad company that the running time of this train was a result of the order of the Commission.

It will be noted that the order of the Commission expressly denied the application requiring the train to leave earlier, but suggested that the matter be given consideration by the railroad company. I can not find anything in the situation that leads to the conclusion that this Commission desired this train expedited without preserving proper connection at Philadelphia for patrons of the road coming at approximately that hour of the morning from the north.

Undoubtedly the somewhat earlier arrival of train No. 17 proves a convenience to the passengers desiring to reach Antwerp or Gouverneur and other points on the line to Massena Springs, but such additional convenience consequent upon its earlier arrival by a few minutes, must be slight indeed in comparison with the great discomfort which

must follow the long delay in waiting many hours at Philadelphia, necessarily experienced by those coming from points on the line from Ogdensburg.

But this added convenience of the few minutes earlier arrival is purely theoretical as No. 17 does not, as a matter of fact, arrive on time except on unusual occasions.

An examination has been made of the history of this train from and including July 28th of the current year down to November 11th instant, which is understood to be typical of its entire experience since being scheduled for the earlier departure from Watertown. This is a record of 93 days, and on only 18 of them was the train on time at Philadelphia. The delays are of greater or lesser extent, and on 17 of these occasions the train was actually late enough to permit passengers so desiring to make the connection now under consideration.

The delay of this train No. 17 leaving Watertown is caused by the lateness of trains of which it is the connecting successor. Train No. 59 on the St. Lawrence division leaves Utica after train No. 33 on the main line arrives, and carries sleeping cars and express cars transferred from No. 33.

At Carthage sleeping cars and express cars are again transferred, this time to train No. 402, which runs to Watertown. Here a third transfer of sleeping cars and express is made to the train in question, No. 17, and thus whatever delay occurs either to No. 33, No. 59, or No. 402, is reflected in No. 17, which can not leave Watertown until No. 59 arrives, and the necessary transfers are made. This is the cause of the frequent delays described, and seems to be frequently unavoidable.

If the train were scheduled to leave Watertown 25 minutes later, namely at 7:30 a. m., and to leave Philadelphia on the arrival of the train from Ogdensburg at 8:10 a. m., those desiring to make the connection there to points beyond would be sure of being accommodated, and the experience

would not be very materially different from that which is now frequently encountered on account of the delay due to the necessity of waiting at Watertown to complete the connection with the train from the main line.

An examination of the running time also discloses the further interesting fact that frequently when the train is late at Philadelphia, or at points near its origin, the time is made up later in whole or in part. Thus it appears that on the 5th of this month this train passed Philadelphia at 8:10 a. m., making the connection desired 25 minutes late, but it had almost made up its schedule time at the time it had reached Norwood where it was only 5 minutes late. This indicates that some improvement can be made in the running time beyond Philadelphia, and that the train may be expedited so that its time of arrival at the stations toward the east need not be very materially later than as now scheduled, and that the delay may be practically overcome before Massena Springs is reached.

It is therefore recommended that an order be entered directing train No. 17 to leave Watertown at 7:30 a. m., and leave Philadelphia at 8:10 a. m. upon the arrival of the train from Ogdensburg.

Trains No. 90, running from Ogdensburg to DeKalb Junction, and No. 91, running from DeKalb Junction to Ogdensburg should also be delayed sufficiently to make the connection at DeKalb Junction with train No. 17.

It would also seem advisable to delay the departure of No. 59 from Philadelphia until the arrival of No. 17. It is now held there for that purpose and affords an opportunity for passengers from Watertown to make a close connection to Ogdensburg, and this facility should be extended under the change of arrangements proposed.

It was shown upon the hearing by the Railroad Company that in this vicinity there are certain bus lines in operation which can accommodate the local traffic at least to some extent. This undoubtedly relieves the situation to a large

extent in good weather, but at times of storm, and especially during the ordinary Winter experienced in this locality, the use of such bus lines is not satisfactory, and for several months must be entirely impossible. Undoubtedly during the Winter, which is now upon us, such service will be entirely unavailable for many weeks.

It was further suggested on the hearing by the complainants that the railroad be ordered to restore the running of the train from Massena Springs, which formerly left there at 2:30 o'clock in the afternoon, and arrived at Philadelphia at 5:20. This train was taken off as a result of the general curtailment of service prevalent throughout the country at about the time of our entry into the war with Germany.

There is not in the record sufficient evidence, nor is there any indication that such evidence exists, to warrant an order that this train be as yet restored. That question need not be finally passed upon now, but is a matter which may properly be taken up later when conditions become more settled.

It is true that the absence of this train, or one running substantially on its time, may prevent the return of passengers the same day who have left points between Ogdensburg and Philadelphia to points easterly of the latter station, but these round trip passengers are very few in number. The records most clearly indicate it. The travel, so far as the evidence discloses, is not composed to any very large extent of persons who wish both to go and return between these points the same day.

All reasonable demands of the situation at present are met by requiring the connection in the morning, which it would seem could be brought about without any very serious inconvenience to those on any other portion of the line, and which is not very divergent from actual experience in view of the frequent inability of the train to meet its present running schedule, on account of delays due to the necessary connection at its point of origin.

All concur.

In the Matter of the Complaint of the MAYOR AND COMMON COUNCIL OF THE CITY OF OSWEGO *against* UNITED STATES RAILROAD ADMINISTRATION, NEW YORK, ONTARIO AND WESTERN RAILWAY, as to alleged proposed discontinuance of trains Nos. 1 northbound passenger, and 2 southbound passenger, between New York and Oswego. [Case No. 7049.]

Decided November 18, 1919.

Appearances:

Hon. John Fitzgibbons, Mayor of the City of Oswego, representing complainants.

C. L. Andrus, room 3714, Grand Central Terminal, New York city, as attorney for United States Railroad Administration, New York Ontario and Western Railway, respondent.

KELLOGG, Commissioner:

The main line of the New York, Ontario and Western railroad runs from its northern terminus at Oswego in a general southeasterly direction to Cornwall-on-the-Hudson, a distance of 274 miles, from which point to Weehawken, New Jersey, 52 miles distant, it operates its trains over the West Shore railroad under a traffic agreement, and thus affords through transportation from the port of New York to the waters of Lake Ontario.

This line was constructed by the New York, Oswego and Midland Railroad Company something over fifty years ago, and the construction was largely aided by the tax payers of the various municipalities through which it ran, which were authorized by chapter 298 of the laws of 1866 to raise funds for that purpose by the issue of bonds in their respective municipalities to an amount not exceeding 30 per cent of assessed valuation.

The City of Oswego contributed to this enterprise in 1867, \$600,000, obtained by the issue of its municipal bonds, and during the fifty years following, this debt was discharged by the taxpayers of that city in the aggregate of \$1,810,000, principal and interest.

The present controversy arises out of the announced intention on the part of the railroad company to discontinue the operation on the northerly end of its line between Oswego and Oneida of train No. 1 running northerly, and train No. 2 running southerly, although the operation of these trains is proposed to be continued south of Oneida.

Being advised of this intention, the Common Council of the City of Oswego made petition to this Commission to prohibit the discontinuance of the trains between Oneida and Oswego, and upon the hearing the railroad company asserted its intention to discontinue the trains between said points if permitted, and requested permission to that effect.

The distance from Oneida to Oswego is fifty-eight miles. Along this line and on the line are various small stations, and also the city of Fulton. Between Oswego and Fulton the line is paralleled by a branch line of the Delaware, Lackawanna and Western railroad, and also by the interurban trolley line of the Empire State railroad. The New York Central Railroad Company also operates trains over the line of the New York, Ontario and Western in continuation of its branch line from Syracuse to Fulton.

From Fulton, however, to Oneida, a distance of forty-six miles, there is no other railway service except at Central Square where this line is intersected by a branch of the New York Central railroad running from Syracuse to Richland, and at Sylvan Junction where it is intersected by a line of the Lehigh Valley running from Camden to Canastota.

This service on the branch lines of the Delaware, Lackawanna and Western, and of the New York Central from Oswego to Syracuse is very slight, one train being operated

each way per day on the former and two trains on the latter branch. The trolley service is frequent, being at least hourly during the daytime.

The line, however, to Oswego of the respondent is a main line, and is the only main line that comes into that city from the south. Trains Nos. 1 and 2, the northerly activities of which are sought to be discontinued, are the only through passenger trains on the New York, Ontario and Western, so that if hereafter they run only southerly of Oneida, there will be no through passenger train on the line.

The trains in question, or others running substantially on their time seem to have been operated since the first construction of the line until the general curtailment of the service inaugurated by the Federal Administration after it assumed control of the railroads during the war time activities.

During last Winter these trains were not run northerly of Oneida. Their through operation, however, was resumed during the past Summer, so that during the entire history of the road there has been a through operation of these trains, or substantially similar ones, for a period of fifty years, except during one winter season. The suspension during that season was presumed to be justified by the emergency arising from the war conditions. The necessity of the primary use of the railroad for the transportation of men and materials, and the proper conservation of fuel resulting from the curtailment of passenger service, were all recognized as most essential by the people in general, and the inconvenience was patriotically and cheerfully submitted to in order to contribute to the great effort at that time being made to win the war. It is now proposed during the coming Winter to return to a condition which was justified only by war time necessity and which has never been attempted before except in that emergency.

The company has conclusively established that the travel on this line north of Oneida to points beyond Sidney in the direction of Weehawken is very slight, and that through

passengers to New York take the better equipped and more satisfactorily operated lines of the New York Central and Delaware, Lackawanna and Western, even though the northerly portions of their journeyings are over branches.

The increased cost of operation on passenger service, due to higher wages and the cost of materials, is urged as a reason for abandoning this portion of the route of these trains.

The city of Oswego is, however, the terminus of this railroad. It is the destination or origin of a substantial freight traffic. It is the port at which transfers are made to and from lake vessels, and aside from the fact that it has contributed most liberally to the construction of this railroad, it is entitled to adequate service.

Undoubtedly most if not all of the passenger service on this whole line could be shown to be not lucrative, particularly in the winter season, but where a railroad company obtains a substantial revenue in freight from a terminal point, it should give the community where it enjoys these privileges, and from which it derives such revenue, adequate passenger service, and indeed such course is ultimately to its pecuniary advantage in order that such communities may prosper.

There should be improvement rather than retrogression in carrier service, especially to and from our prominent municipalities which, if properly served, have an opportunity for development, whereas the deprivation of proper transportation facilities prevents that normal and healthy growth which would otherwise be experienced.

The only question pertinent, therefore, for consideration is whether the passenger service rendered to the people of Oswego and intermediate points will remain adequate if the discontinuance of these trains is permitted.

Train No. 1 runs northerly. It leaves Weehawken at 8:10 in the morning, and arrives at Oswego at 8:22 p. m. Train No. 2 runs southerly. It leaves Oswego at 8:05 a. m. and arrives at Weehawken at 9:35 p. m.

As has been indicated they are the only through trains over the line, and it would seem to be a fair assumption unless other compelling considerations intervene to the contrary that there should be at least one train each way between the respective termini of a railroad, especially where that railroad is only 326 miles in length.

If train No. 2 is discontinued north of Oneida, the only regular passenger train which a prospective passenger can take from Oswego to Oneida is No. 42, leaving Oswego at 2 o'clock in the afternoon and arriving at Oneida at 4:10, but it goes only as far as Norwich, a station forty-two miles beyond Oneida, at which it arrives at 4:45 p. m.

There is another train, however, No. 10, about which much has been said, which leaves Oswego at 7:40 a. m. and continues to Sidney, a station sixty-seven miles beyond Oneida, where it arrives after a journey of seven and one-half hours at 3:08 p. m., having accomplished the feat, if it is on time, of having negotiated one hundred and twenty-five miles at a rate of less than seventeen miles an hour.

It is suggested that people desiring to leave Oswego or other intermediate points for Oneida or beyond should take this train No. 10. However, it develops that this is a milk train and it stops at various stations to load milk, and in some places takes on new cars. Its running time to Oneida is three hours and seven minutes. The passenger coach attached to it is heated by a "Baker heater," an apparatus whose heat is generated in a stove contained in the car, which it would not be lawful to operate on this railroad except on a mixed train, under the prohibition of section 76 of the Railroad Law.

One passenger train southerly, which does not leave until 2 p. m. together with this passenger coach attached to the milk train, which has been described can not be considered adequate facilities for a line serving the city of Oswego, with a population of over 25,000, and the smaller but very thriving city of Fulton. Returning north there is practically the

same situation if the operation of No. 1 leaving Oneida is discontinued. The only regular passenger train which is then available is No. 41 leaving Oneida at 9:55 in the morning and arriving at Oswego at 2:15 p. m. In addition there is the returning milk train No. 9, a counterpart of No. 10, which leaves Oneida at 4:10 p. m. and arrives at Oswego at 6:50 p. m., thus consuming two hours and forty minutes on the journey.

It must be seen that if the running of these trains is discontinued north of Oneida, no passenger can, traveling south over the line of this railroad, leave Oswego or any other point and return the same day, except upon the passenger coach attached to the milk train which in view of the importance of the municipalities involved can not in this day and generation be considered as affording adequate, safe, and proper facilities to the public.

It is therefore recommended that the petition of the City of Oswego, forbidding the discontinuance of the operation of these trains north of Oneida, be granted; and that the application of the New York, Ontario and Western Railway for discontinuance of that operation be denied.

All concur.

Complaint of POSTAL TELEGRAPH-CABLE COMPANY *against*
WESTERN UNION TELEGRAPH COMPANY as to refusal to
take messages without payment of cash. [Case No. 6994.]

Where for more than thirty years a telegraph company has pursued the policy of extending credit to all customers whose business is of sufficient volume to warrant a charge account, and it appears that 70 per cent of its business is credit business, *Held* that the sudden withdrawal of the facility of such an account from a competing company, notwithstanding the continuance of the practice with its customers generally, is a discrimination as well as an unfair and unreasonable practice within the meaning of section 91 of the Public Service Commissions Law.

The Public Service Commission has power to order the restoration of the prior practice by virtue of the provisions of section 97 of said law.

Decided November 20, 1919.

Appearances:

John L. Farrell, 44 Wall street, New York city, for complainant.

Francis R. Stark, attorney, and *J. C. Willever*, Vice-president, 195 Broadway, New York city, for respondent.

HILL, Chairman:

This is a complaint on the part of the Postal Telegraph-Cable Company, the object of which is to procure a determination from the Commission that the practice adopted by the Western Union Telegraph Company on or about August 1, 1919, of demanding and collecting from the complainant in cash the tolls on messages transferred by it to the Western Union Telegraph Company in the State of New York for transmission to points of destination in the State of New York, and abrogating the practice which it had theretofore observed of extending to the complainant and its patrons having charge accounts with the Western

Union company the customary privilege of a charge account payable monthly or at any other period for which the Western Union company extends credit generally to its patrons with regard to tolls on telegrams. The Western Union Telegraph Company appeared and answered the complaint, a hearing was held by the Commission, and evidence taken thereon from which the following facts appear:

STATEMENT OF FACTS

For thirty years prior to August 1, 1919, a practice had existed between the two companies to receive from each other telegrams destined to points reached by one company and not by the other, and charge the tolls to an account instead of demanding cash payment. On August 1, 1919, the Western Union company abruptly discontinued this practice, such action resulting in this complaint. The former practice was payment on monthly bills. If the sender of a message already had an account with the Western Union company, that company charged the toll direct to the sender on its own books; in the absence of such account, it charged the toll to the Postal company. The arrangement was mutual. On August 1st both companies received back their telegraph lines from the Federal Government, and the Postal company on that day reduced its telegraph rates to those which had preceded federal control. This was a 20 per cent reduction, which exactly equaled the increase which had been maintained during the federal control by the Federal Government. The Postal company continues the old practice with the Western Union company and its customers, and the Western Union company gives such an account to all the other corporations with which it deals, such as the Bell Telephone Company and the Commercial Cable Company. The Western Union company gives no reason for this change of practice, but on the other hand admitted upon hearing that it entertained no doubt whatever of the financial responsibility of the Postal company;

nor did it show or claim that it had ever had any serious trouble with the Postal company in getting its monthly settlements. The Western Union company did not reduce the Burleson rates, but continued them in effect. Prior to government control as well as during such control, the rates of both companies were equal. From the evidence it seems fair to deduce the conclusion that this difference in rates is the real, though unassigned, reason for the change of practice on the part of the Western Union company with regard to the charge account.

In some of the Postal company's offices the bills from the Western Union company run from four to six thousand dollars per month. The Postal company, upon receiving a message directed to an exclusive Western Union point, sends it to the Western Union office at the point of origin and pays the full toll, losing the service of its messenger boy. This it to satisfy its customers and not turn the messages back and refuse to handle them. The Postal company's objection to the new rule is that it requires it to keep cash on hand and send it to the Western Union by messenger boys several times in the course of a day. Some times a large amount of money is involved. At times these messages are picked up by the messenger boys in response to a call, and some times they are handed in at the Postal offices, the sender preferring to leave it with the Postal company for transmission over the Western Union so as to have but one account instead of two; and also in some cases they prefer to have the Postal handle their business.

About 70 per cent of the Western Union business is done on credit, and its custom is to extend credit to all responsible citizens and companies desiring the same, and it will as matter of course receive a message over the telephone from any telephone subscriber not on its blacklist and send it on credit, charging it to the telephone account to be collected by the telephone company's agent, but the telephone company assuming no ultimate liability. The company

issues periodical printed bulletins to all of its division managers, agents, and subordinate officials, containing instructions which are to guide them in dealing with the public. Commercial bulletin No. 44, issued from New York June 15, 1919, and addressed to such officials, deals exclusively with the subject of credit to customers, and prescribes the policy and routine to be pursued. It is stated in the answer to comprise the only "rule" which the respondent has material to the subject. The rule or practice thus adopted and prescribed, so far as it is pertinent here, is as follows:

It is the policy of the company to open accounts freely with all responsible patrons whose telegraphing is of sufficient volume to constitute an account a real convenience, but there is no inconvenience involved in the payment of cash for occasional messages, and the company should not be asked to run accounts the cost of which is out of all proportion to the business done.

The counsel for the Western Union company advanced the claim that since August 1st, if a man having a charge account with the Western Union gave his message to the Postal for transmission to the Western Union to be charged to the sender's account, there would be trouble in making up his account, because he might claim that he was entitled to the 20 per cent reduction as to messages going to exclusive Western Union points. Prior to August 1st it was an operating practice for the Western Union to extend this credit. This objection seems to be untenable, however, because the fact appears that the Postal company has no rate to exclusive Western Union points, and hence there is no danger of the customer claiming that the Postal rate applied. It appears that the Western Union company refuses even to accept a message from a Postal messenger boy unless he pays the cash, but will take a message from a boy not in uniform even though he does not pay the cash. It is fairly to be inferred from the facts that the change effected on August 1st by the Western Union company operates not only to the great inconvenience and irritation

of the Postal company but that this inconvenience and annoyance also extend to the Western Union company and to the public.

THE STATUTES

The statutes which are applicable to the question presented are section 103 of the Transportation Corporations Law, and sections 91, 96, and 97 of the Public Service Commissions Law. Section 103 of the Transportation Corporations Law provides that every telegraph and telephone corporation "shall receive despatches from and for other telegraph or telephone lines or corporations, and from and for any individual, and on payment of the usual charges by individuals for transmitting despatches as established by the rules and regulations of such corporations, transmit the same with impartiality and good faith and in the order in which they are received . . ." Section 91 of the Public Service Commissions Law requires every such company to furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable; and in subdivision 3 prohibits the corporation from the making or giving of any undue or unreasonable preference or advantage to any person, corporation, or locality, or subjecting any particular person, corporation, or locality to any undue or unreasonable prejudice or disadvantage in any respect whatever. Section 97 provides that whenever the Commission shall be of opinion, after a hearing had upon its own motion or upon a complaint . . . that the rules, regulations or practices of any telegraph or telephone corporation are unjust or unreasonable, or that the equipment or service of any telegraph corporation or telephone corporation is inadequate, inefficient or insufficient, the Commission shall determine the just, reasonable, adequate, efficient, and proper regulations and practices, equipment and service thereafter to be installed, to be observed and used, and to fix and prescribe the same by order. The same power and method of procedure are provided with respect to rates.

DISCUSSION OF THE LAW AND THE FACTS

It is not difficult to deduce from the language of these statutory provisions a clear legislative intent that in general all customers shall be treated on a substantial equality both as to rates and service, that any discrimination or unjust or unreasonable practice in either respect is prohibited, and that upon complaint to the Public Service Commission of any unjust or unreasonable practice relating to either rates or service, that Commission has power to inhibit the same and prescribe in its place the just and reasonable rates and practices which are to be maintained.

But these beneficent provisions depend for their vitality upon the degree to which they are capable of being practically applied to the operating practices, customs, and usages which are pursued in the daily work of the corporation, and it is these practical details which the statute can deal with only in general terms with which the customer comes into actual daily contact and which exclusively interest him.

It is in this field of practical application that the respondent finds its ground of opposition to the prayer of the complaint. Respondent's counsel asserts, notwithstanding the clearly defined general intent of the statute that there shall be equality of treatment to all customers without partiality and in good faith, that to grant the prayer of the petition would be in effect ordering that credit for service be given the Postal company, and that in view of the statutory right of the Western Union company to exact payment before performing service, the Western Union has an absolute right to withhold and refuse such a credit. This argument is advanced upon the ground that the extending or withholding of credit is a common law right, and that without incurring the charge of discrimination respondent is entitled to determine for itself to whom it shall extend and from whom it shall withhold credit, and we are referred to certain authorities in the federal courts which arose under the Act to Regulate Commerce where such a doctrine was advanced in rail-

road freight cases. *Little Rock & M. R. v. St. Louis S. W. R.*, 63 Fed. 775 [decided 1894]; *Gamble-Robinson Co. v. Chicago, etc. Ry.*, 168 Fed. 161 [1909]. But we note that the federal authorities conflict on this doctrine. The *Gamble-Robinson* decision was by a divided court, Hook J. dissenting on the point here in issue; while in the later case of *U. S. v. Hocking Valley Ry. Co.*, 194 Fed. 234 [1911], it was held to be a discrimination to extend a four-months' credit for freight charges to one shipper while exacting monthly settlements from other shippers. In the case of *Baltimore & Ohio R. R. Co. v. Adams Express Co.*, 22 Fed. 404, the court said:

It must be conceded that the general rule is that a carrier cannot be compelled to carry without prepayment, and, *a fortiori*, a carrier cannot ordinarily be compelled to advance its own money to its customers; but when, by its encouragement, a system has grown up of which advancing charges is an essential feature, and when it does advance charges for some of its customers and refuses to do so for others, and it is shown that this discrimination is necessarily fatal to the business of those to whom the facility is refused, and it is further shown that the facility imposes no risk or inconvenience upon the carrier granting it, and is an essential facility and established usage of the business, is it going too far to say that in this respect as in others not more essential, all must be treated alike? We strongly incline to the opinion that this reasonable doctrine must prevail. It seems to us that the evils resulting from such discrimination if allowed are quite as apparent and dangerous as any of those which have been held to be unlawful. In this opinion, however, we differ from at least two others of the circuit courts of the United States in which this same question between the same litigants has very recently been passed upon, and, in this condition of the litigation over this question between these parties, we shall not grant the preliminary injunction with respect to accrued charges, as prayed for.

The *Gamble-Robinson* case was distinguished. The court, at page 250, referring to that case, says—

There the alleged discrimination is nothing more than conduct designed to secure the company's full rates and to save embarrassment and trouble involved in dealing, after the service, with troublesome shippers who show a disposition to be captious touching the carriage of products perishable in their nature, of a character which renders

them susceptible to claims for errors in charges for transportation and for damages during transportation.

And the court further says—

If extending credit for freight charges to one shipper while exacting cash payments from his competitor . . . is not extending an advantage to such shipper which involves a correlative discrimination in respect of transportation against those not so favored, the court is wholly in error. If it is the practice of such a discrimination, then the act is fully covered by the explicit language of the statute, for the means to such end readily meet the definition of a device, as that term is used in the law.

The decision of the District Court in the *Hocking Valley* case is affirmed by the Circuit Court of Appeals in 210 Fed. 735 [1914]. And in the still later case in that court of *U. S. v. Erie R. R.*, 209 Fed. 283 [1913], an indictment charging a railroad company with violation of the Interstate Commerce act by failing to observe its tariff schedule as to demurrage was held sufficient where it charged that for a period of two years defendant failed to assess demurrage against a particular customer while charging it against others.

An examination of these and kindred cases leads to the impression that in the later cases the federal courts have shown a growing inclination to relax or revoke the earlier doctrine of the *Little Rock* and *Gamble-Robinson* cases, and to recognize that much more important common law rights than those adverted to in the earlier cases have been made to give way in order to render effective the antidiscrimination provisions of the commerce acts.

Furthermore, we think the facts in this case clearly distinguish it from any of those which have been referred to. In none of those cases did it appear that the business of the company was a credit business, nor that the company had adopted a definite policy of extending credit generally, prescribing the rules and practices with regard thereto, nor did any of those cases involve an interpretation of the provisions of the Public Service Commissions Law of the State of New York.

We think, moreover, that it is a question whether or not, in view of the facts disclosed by this record, the matter of the practice with respect to the extension of credit has not become such an inherent and important feature of the operating practice of the company as to fall within the jurisdiction of the Commission over operating practices. It appears that as the result of seventy years' experience the business of the company, which undoubtedly started as a strictly cash business, has by force of necessity become essentially a credit business. We now find that 70 per cent of its business is done on credit. Undoubtedly this 70 per cent comprises the most profitable part of the company's operations, because it implies steady custom, and also that those to whom credit is extended are the larger and more important customers. We find that the company has formally adopted a definite policy of granting credit "freely with all responsible patrons whose telegraphing is of sufficient volume to constitute an account a real convenience," and providing for the exaction of cash only in case of occasional messages and where "the cost of running the account would be out of proportion to the business done". In the case of telephone corporations, it is the universal practice arising from the necessity of the case that toll messages sent by exchange subscribers shall be sent on credit. It would be impossible as a practical operation to exact the cash from the subscriber in each instance. On the other hand, the company undoubtedly has the abstract right to demand the cash in such cases before sending the message. Legally it may so do, but practically it is impossible for it to so do; and thus has grown up of necessity the universal practice of making such charges credit charges. As above illustrated, the same is true with respect to the bulk of the business of telegraph companies.

It thus seems easy to perceive that the service of telephone and telegraph companies is essentially and in its nature a credit service, the cash feature being practically confined to

the casual customer, and that the companies fully recognize this vital fact in practice.

Undoubtedly the company has the right to refuse credit to any and all customers. Neither is there any question that where it adopts the practice of extending credit it should be given a range of discretion with respect thereto **sufficient to conserve its own reasonable convenience and protect itself against annoyance or risk of loss.** But when it adopts a policy of extending credit "freely with all responsible patrons whose telegraphing is of sufficient volume" and promulgates an operating rule to that end, and follows the practice for a long period of years, it would seem that its rules and practices with respect to such credits become such a vital and important feature of service as to fall within the purview of the statutes which are designed to prevent discrimination and regulate the corporate practices to the end that they shall conform to justice and reason.

It would seem unnecessary to discuss the reasonableness of the former practice as contended for by the complainant. The practice having been in vogue for thirty years and no reason having been assigned for its alteration, and considering all the facts shown in the record with regard thereto, including the fact that the Western Union company has singled out the Postal company as one to be deprived of credit while it is continued to all others, would seem to be sufficient evidence of the reasonableness of the prior practice.

In a prior complaint by the Postal against the Western Union company, wherein the determination of this Commission was upheld on review by both the Appellate Division and the Court of Appeals, the Commission, in discussing the reasonableness of the practice there under consideration but which has no relation to this complaint, said —

The only question is whether it is legitimate and reasonable for the Western Union to make this charge . . . **Its own practice determines that in other cases it is not reasonable, and it seems to us that this practice determines the whole matter.* Clearly a public service corporation must extend precisely the same facilities to a competitor that

* Italics ours.

it does to the entire world. It can make no distinction between those offering it business; it must charge them alike and serve them alike. [*Postal Tel.-Cable Co.*, 3 P. S. C. 2nd D. 180; affirmed 180 A. D. 144; 211 N. Y. 542.]

Respondent's counsel asserts that the attempt by the Commission to regulate the credit feature of the telegraph business would lead to embarrassing consequences. He asks if the Commission is prepared to entertain complaints from customers who have been refused the privilege of a charge account and who assert that their business standing is as good as that of their neighbors; from customers whose credit has been shut off and who may allege that they are as solvent as they ever were; or from customers whose accounts have been closed without explanation after having been maintained for a number of years; and, if so, will the Commission in each case require the company to give a reason for closing this account.

The embarrassment which is implied in these questions seems to us more fanciful than real. The argument in our opinion is lacking in force for the reason, among others, that the daily practice of the Commission with regard to exactly such cases in connection with telephone companies completely refutes it. The Commission has for years been constantly disposing of such complaints against telephone companies and has found no practical difficulty in adjusting them.

Neither are we impressed with the argument of respondent's counsel, that the power of the Commission to regulate practices must be confined to the prescription of general practices and can not be exercised with respect to a practice relating to one individual. Here again the practical refutes the theoretical, and it is found that in the practical application of the beneficent purposes of the statute the activities of the Commission are necessarily applied in much detail. Thus the practice of a railroad in operating its cars over a particular highway crossing, of a gas company with respect to its service connection with a particular house, or

of a telephone company with respect to a particular instrument, all are necessarily the legitimate subjects of regulation under the various regulating statutes if their full vitality is to be brought into effective operation, and in practice are the subjects of the Commission's daily routine work. The language of the statute is so broad in this respect that it seems unnecessary to construe it. Clearly it should and must be given such a construction as will best adapt the practice under it to the conditions which it was intended to affect.

CONCLUSION

The considerations thus expressed lead naturally to the determination that the Commission is of opinion that the altered practice adopted on or about August 1, 1919, with the Western Union company in its dealings with the Postal company, of which complaint is made, was and is unjust and unreasonable, and that the practice theretofore maintained was just and reasonable and should be restored.

It is not necessary to support this conclusion on the ground that the altered practice constitutes a discrimination falling within the prohibition of section 91 of the Public Service Commissions Law. While we think it is an undue and unreasonable discrimination prohibited by that section, we think also that it is an unjust and unreasonable practice within the purview of section 97.

An order will be entered accordingly.

Commissioner Barhite dissents solely on ground that this Commission has no authority to determine when a public service corporation shall or shall not extend credit to a customer.

In the Matter of the Complaint of HARRY A. WILKINSON AS PRESIDENT OF THE VILLAGE OF CLINTON, Oneida county, against NEW YORK STATE RAILWAYS as to passenger fare between Clinton and Utica. [Case No. 6743.]

Decided November 25, 1919.

Appearances:

L. M. Martin, Clinton, and *D. E. Powers*, 306 Arcade Building, Utica, for the complainant.

Kernan & Kernan (by Warnick J. Kernan), Utica, for respondent.

George William Browning, Clinton, in person.

FENNELL, Commissioner:

To provide traction facilities between the village of Clinton and the city of Utica, The Utica Suburban Railway Company proposed in 1901 to construct a line from the village of New Hartford, the then terminus of the line operated, as lessee, by The Utica Belt Line Street Railroad Company, to and into the village of Clinton. In furtherance of such plan the village, on July 30, 1901, gave its consent to The Utica Suburban Railway Company to construct, maintain and operate a "branch or extension" along certain streets in the village of Clinton to the extent of 0.66 of a mile.

The franchise states that the "consent is given upon the following express conditions". One of these conditions is "that the rate of fare charged shall be 15 cents from the terminus in the village of Clinton to Utica, and 25 cents for a round trip with the same transfer privileges as granted in the city of Utica".

After the line was built, and on November 27, 1901, The Utica Suburban Railway was merged with the Utica and Mohawk Valley Railway Company, the company then own-

ing and operating the line from Utica to New Hartford. On November 1, 1912, the latter railroad company was consolidated with other companies into the New York State Railways.

On December 2, 1918, the rate of fare in the city of Utica was, by order of the Public Service Commission, increased from 5 cents to 6 cents. Shortly thereafter the company changed its schedule of rates on the Clinton line to meet the 1 cent increase in Utica. Tickets were sold between Clinton and the Golf Club Loop in New Hartford near the city line of Utica for 10 cents one way and 15 cents round trip. As the Utica 6 cent fare extended to the same point in New Hartford the rate between Clinton and Utica became 16 cents one way and 27 cents round trip.

The complainant contends that the language in the rate clause of the franchise brings this case within the *Quinby* decision.

If the Village of Clinton in giving its consent to the trolley company to lay tracks in its own streets had obtained, in consideration for such consent, a definite rate of fare on all parts of the line within its own boundaries, then the *Quinby* decision might be controlling. But in this case the agreed rate covers the following mileages:

In the village of Clinton.....	0.66 of a mile
In the town of Kirkland.....	2.00 miles
In the town of New Hartford.....	2.23 miles
Right to be transferred in the city of Utica	
on.	58.82 miles

If the *Quinby* decision applies, then the right of a municipality to impose a condition negatives the right of any municipality to impose a condition fixing a rate in or for any municipality other than itself. It would seem, therefore, that a franchise rate fixed by agreement with the Village of Clinton would stand as to that village, but that beyond the village limits such a rate provision could not restrict the authority of other municipalities to agree upon a franchise rate to be charged in such municipalities, nor restrict the power of the Public Service Commission to alter

the interurban rates between such municipalities in a proper case.

Such a rate provision attempting to extend an agreed rate through several other municipalities might automatically produce an unjust discrimination which would be contrary to law. A slight modification of the facts in the present case would be an instance of such an unlawful discrimination. The City of Utica has the right to agree to a franchise rate and to agree to alteration of same. All persons traveling in that city on the same trolley system must be treated alike. The visitor from Clinton is entitled to travel in Utica on that system, when the operation is a system operation, for 6 cents and not for less. Assume four municipalities on one line leading into Utica, each with a 5 cent franchise restriction and the most distant with a franchise fixed through rate of the full 25 cents. Now assume an agreed 2 cent raise of fare by consent in municipalities Nos. 1, 2, and 3 and in the city of Utica itself, and a refusal by No. 4 to modify the franchise rate restriction in municipality No. 4. This would produce a rate of 28 cents between municipality No. 3 and Utica while the rate from No. 4 would remain at 25 cents which would produce a preference of 8 cents to the rider from No. 4, a discrimination on a through ride of about 25 per cent in his favor. This would seem to be in direct conflict with section 36 of the Public Service Commissions Law which provides, among other things, that "it shall be unlawful for any common carrier subject to the provisions of this chapter to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance. . . ."

It is clear that the Clinton trolley line could not exist as an economic unit in and for the village of Clinton unless running interurban to Utica. The necessity for transporta-

tion facilities between Clinton and Utica is the reason for the line in Clinton itself. The company and the village having this in mind made a bargain which took the form of a franchise restriction, but instead of a restriction based upon the transportation necessities of Clinton within itself as a municipality, the consideration for the consent was an agreement extra territorial in nature, and as heretofore stated, whatever binding effect it may have as between the parties thereto it can not substitute itself for the police power of the State as to such extra territorial extent. [See *Matter of Koehn v. Public Service Commission*, 107 Misc. 151.]

The rate of fare beyond the boundary of the village of Clinton being within the jurisdiction of the Public Service Commission, and the franchise rate having been changed to meet the increase within the city of Utica, the question arises, shall the rate be reduced between the village of Clinton and the boundary of the city of Utica? While the village of Clinton does not, in terms, ask such a reduction the effect of enforcing the franchise rate would legally and actually amount to a rate of 9 cents to the boundary of Utica and a round trip rate of 13 cents.

Waiving at this time the legal question as to whether or not such a franchise restriction is, in a case such as this, entirely void as to that portion beyond the corporate limits, or only voidable when and to the extent that its terms come into conflict with an order of the Public Service Commission, we reach the question of the sufficiency of the franchise rate, for if the franchise rate is within the jurisdiction of the Commission then it must be treated in the method provided in the Public Service Commissions Law as to adequacy, unjust discrimination, etc. The police power of the State, delegated to the Public Service Commission, thereupon becomes operative and the relative rights of the traction company and the Village of Clinton become merely their rights in the aggregate of the rights of all: their contractual

rights are no longer effective or controlling in the solution of the resulting problems of fixing rates or regulating service.

According to mileage, the rate is 7.6 cents a mile in Clinton, 3 cents a mile in Utica (assuming an average haul of 2 miles in Utica) and 5 cents for the two towns of New Hartford and Kirkland, over a distance of 4.23 miles, or slightly over one cent a mile. It is clear from the foregoing that as between the traction company, the municipalities and intermediate interurban territory no average mileage rate has been applied, nor, in view of the force of the franchise restrictions, can a rate in this case be fixed on a mileage basis.

The hearings in this case were suspended for a time to permit representatives of the company, the village, and the division of capitalization of this Commission to examine the company's records and agree, if possible, on the amount and allocation of construction costs, revenues, and expenses applicable to the Clinton line. Substantial agreement was reached except upon accruals to cover depreciation. The actual accruals set up by the company were $3\frac{1}{2}$ per cent of gross earnings from the Clinton extension, amounting from 1910 to 1918, inclusive, to \$10,065.67. The accruals as claimed by the company, 5 per cent on way and structures and 6 per cent on equipment, would amount to \$51,191.08.

The claim of the company to have such an accrual allowed to it over the whole period, 1910-1918, in ratios which would now be regarded as within reasonable limits would have more force if no dividends had been paid during those years. But where the return over the whole period averages 8.92 per cent per annum, and the actual charges for such accruals made by the company, during the same period, amounted to \$10,065.67 the company can not consistently urge that because it paid substantial dividends and failed to set aside for accruals the amount which it now contends would have been more nearly adequate, that it should now be allowed to balance against its average return of 8.92 per cent an annual charge in an amount which it did not actually set aside. If

it had set aside such an accrual, amounting to \$51,191.08, and that amount had gone back into the property in renewals and replacements the company would have had an average return of 5.25 per cent. Such a rate would hardly be regarded as fully compensatory, but it would not be compensatory because, with such an accrual set up and so expended, there would have been in the property further renewals and replacements to the extent of \$41,125.41. The company can hardly claim, under the facts of this case, that this sum which might appropriately have been set up for accruals should be so considered when it was, in fact, disbursed in dividends. If the company insists that the ratios of 5 per cent on way and structures and 6 per cent on equipment are and have been the proper ratios of the accruing amortization of this property, and it has taken down four-fifths of that amount in dividends and set up one-fifth of that amount in such accrual account, then if the company is accurate in its present ratio estimates its property is worth about \$41,125.41 less than the investment cost brought down to date, making due allowances for accruals actually set up and used in renewals and replacements and measured by its present fixed capital account. Under such circumstances the rate base of the present year would be \$41,125.41 less than the fixed capital account shows it to be.

We should not consider the hypothetical accruals based upon the ratios presented by the company on the hearing as such ratios were not in fact used by it. When such ratios are actually applied to the property of the company, and out of the fund so set up renewals and replacements are actually made the Commission will certainly be glad to allow them. It is the part of good railroad management to keep a railroad in first class condition, and to this end substantial reserve accrual percentages should and will be looked upon with favor.

Following is a brief statement of the condition of the company during the years 1910-1918 and for the first four.

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months of 1919. The "investment" figures used represent actual construction costs, including certain intangibles such as injuries during construction, law expenditures and interest during construction, totaling in all less than \$10,000. No allowance has been made for working capital or materials and supplies.

	<i>Investment</i>	<i>Revenues</i>	<i>Total expenses</i>	<i>Gross income</i>	<i>Per cent of return</i>
1910	\$122,965.90	\$28,581.07	\$17,845.21	\$11,235.86	9.14
1911	123,702.00	29,454.40	19,895.62	9,558.78	7.73
1912	123,920.58	30,012.99	20,238.06	9,774.93	7.89
1913	124,796.28	33,994.40	20,764.77	13,229.63	10.60
1914	125,172.84	33,810.72	18,024.63	15,786.09	12.61
1915	125,172.84	31,894.07	18,748.85	13,145.72	10.50
1916	125,172.84	34,648.49	19,813.62	14,834.87	11.85
1917	125,218.77	33,882.47	22,931.37	10,451.10	8.35
1918	125,256.76	31,697.70	29,717.47	1,980.23	1.58
	\$1,121,378.80			\$99,997.21	
				Average....	8.92
1919 four months, January 1 to April 30, 1919:					
Revenues					\$10,804.86
Operating expenses			\$9,170.58		
Taxes			472.91		
Depreciation reserve based on 3½% of gross income			378.17		10,021.66
Return					\$783.20
Investment					\$125,917.75
Ratio of return					.0062

If the larger ratios for depreciation reserve as urged by the company on the hearings are applied, \$1528.77 will be added to expenses and the above return of \$783.20 becomes a deficit of \$745.57, producing a return of minus .0059.

The Clinton line has had until recently a high earning value to the respondent company, and if this case grew out of a request of the company for an increase on the Clinton line, as such, it would seem that such increase should be deferred a reasonable length of time in view of the high average rate of return during all the years it has been in operation. But as the increase complained against is not upon the Clinton end of the line, but is simply to meet the increased rate in the city of Utica, and as the returns from the Clinton branch, as such, for the year 1918 and the first part of 1919, show that the company is not now making an unreasonable profit from its operations thereon, it would

seem that the rate as fixed in the schedule should be permitted to stand. If costs again become normal and traffic continues to increase on the Clinton line, the time may come when the contract rate will again be more than compensatory. When such a time arrives the Commission can if the facts warrant reduce the fare below the contract rate.

The rate of fare between the village of Clinton and the Golf Club Loop in the village of New Hartford near the city of Utica should remain at 10 cents with a 15 cent round trip; to this should be added, for a through fare, the general rate for the city of Utica.

An order has been made accordingly.

All concur.

In the Matter of the Complaint of RESIDENTS OF THE COUNTY OF CHAUTAUQUA *against* THE CHAUTAUQUA TRACTION COMPANY and JAMESTOWN, WESTFIELD AND NORTHWESTERN RAILROAD COMPANY as to proposed increases in passenger rates. [Case No. 6527.]

Decided November 25, 1919.

Appearances:

Harry M. Youngs, Mayville, as Attorney for Town of Chautauqua and Village of Mayville.

A. D. Falconer, Jamestown, and *H. M. Crosby*, Falconer, as attorneys for complainants in the village of Chautauqua and vicinity.

Cheston A. Price, Jamestown, of Counsel, for the Corporation Counsel of Jamestown.

Fisher & Fisher, Jamestown, attorneys for respondents.

Don C. Chase, Mayville, representing complainants.

A. B. Sheldon, Sherman, individually and as attorney in fact for *Lura Sheldon Andrews* and *Nella A. Sheldon*.

Samuel A. Carlson, Mayor, *Ernest Cawcroft*, Corporation Counsel, and *Frank H. Appleby*, Member of Common Council, representing the City of Jamestown.

J. A. Powers, Ashville, representing Ashville complainants against The Chautauqua Traction Company.

A. N. Broadhead, Jamestown, as President of respondents.

G. H. Maltbie, General Manager J., W. & N. W. Railroad Company, Jamestown; *F. H. Kibling*, Auditor of The Chautauqua Traction Company.

FENNELL, Commissioner:

On June 10, 1918, under the direction of the United States Railroad Administration, The Chautauqua Traction Company and the Jamestown, Westfield and Northwestern Railroad Company put into effect a new schedule of rates

made up on the standard 8 cents a mile basis. In July these two roads were relinquished by the United States Railroad Administration, and on July 20th the old rates were temporarily restored. On July 23rd the companies filed on statutory notice a schedule practically reestablishing the rates originally fixed by the United States Railroad Administration. These rates were objected to and hearings were held at Jamestown and Albany.

For brevity The Chautauqua Traction Company will hereinafter be referred to as the Traction company, and the Jamestown, Westfield and Northwestern Railroad Company as the Railroad company.

The Director General's order fixing a rate schedule also required the cancellation of mileage books and redemption of unused portions of same. Upon the relinquishment of the roads some of the former owners of such books demanded that their mileage books be restored to them upon their returning to the companies the redemption price.

The sitting Commissioner ruled that as to mileage book redemptions completed under such order, and while the roads were under the Director General's control, the transaction was completed under federal authority, the respective rights thereupon became fixed, and the Commission was without authority to revive them.

As to mileage ticket books sold prior to June 10, 1918, and good until used, and which had not been redeemed, the Traction company advised the Commission that it would arrange to honor such mileage books of its issue, also books which were issued during the period July 22 to August 23, 1918, when presented for passage.

Carriers should provide in their tariffs reasonable rules to govern sale and use of mileage ticket books, bearing in mind that the price for which sold as well as rules governing use may not only be subject to change upon complaint to the Commission but also by the carriers themselves; and to avoid such discrimination and preference as is prohibited by law as

well as to avoid complaints and annoyances to and dissatisfaction by patrons, carriers should not sell such ticket books good for use longer than one year from date of sale, such limit being so qualified as to provide in substance that in case the sales price is lawfully changed before expiration of time limit such ticket will not be honored for transportation, but the unused portions will be redeemed *pro rata*.

It appears that about the year 1904 a line of railroad was built and equipped for operation by electricity, extending from a point in the village of Lakewood, N. Y., intersecting the tracks of the Jamestown Street Railway Company, hereinafter called the Jamestown company, along the west side of Chautauqua lake to and through the village of Mayville and beyond to the New York Central railroad depot in the village of Westfield, N. Y., a distance of about twenty-seven miles.

Mr. A. N. Broadhead of Jamestown, N. Y., a member of the firm of Wm. Broadhead & Sons, representing himself and other members of Wm. Broadhead's family, constructed this road and financed the construction, and when completed it was turned over to The Chautauqua Traction Company. From the beginning of its operation the cars of the Traction company ran between its connection with the tracks of the Jamestown company in Lakewood, N. Y., and the Jamestown company's common center terminal in the city of Jamestown over tracks owned by the Jamestown company.

The railroad now owned and operated by the Railroad company was formerly a steam railroad operating between Jamestown, N. Y., along the east side of Chautauqua lake to and through Mayville and beyond to the New York Central depot in Westfield, N. Y., a distance of about thirty-two miles, with a branch line extending from Mayville south along the shore of Chautauqua lake to Chautauqua, N. Y., a distance of about three miles. This company's passenger terminal in Jamestown was located at a point known as the boat landing. It had freight terminals and facilities in and around the boat landing and beyond across the Erie Railroad

Company's tracks to and around its freight depot situate on Steel street, Jamestown, N. Y.

In the Fall of 1913 this road was sold at receiver's sale, and later purchased by Mr. A. N. Broadhead, representing the Broadhead family, and immediately work was commenced to rehabilitate and equip for operation by electricity that portion of the road from the boat landing in Jamestown to the New York Central depot, Westfield, N. Y. The branch line, Mayville to Chautauqua, was leased to The Pennsylvania Railroad Company, and the freight tracks and terminals in Jamestown were leased to the Erie Railroad Company, the Broadhead interests financing the reconstruction. When operation by electricity began, the cars of this company were operated in Jamestown from the boat landing terminal over the Jamestown company's tracks to the common street car center in the city.

The affairs of the Traction company, Railroad company, and Jamestown company appear to be so closely related that they may be considered a family system.

Repeated effort has been made to have the Traction company and the Railroad company make agreements between said companies and the Jamestown company covering right to use tracks, terminal facilities, etc., and file same with the Commission. Promises have been made so to do, but no agreements have as yet been filed.

The restriction of the public use of a utility caused by a substantial increase of fare is shown by a statement prepared from the reports of these companies filed with the Commission.

<i>Passenger Revenue:</i>				
	<i>October 1, 1917, to April 1, 1918</i>	<i>October 1, 1918, to April 1, 1919</i>	<i>Increase</i>	<i>Decrease</i>
Traction company.....	\$38,171.76	\$38,663.19	\$491.33	.....
Railroad company.....	46,970.88	53,217.45	6,246.57	.....
<i>Number of Passenger Fares Collected:</i>				
Traction company.....	293,738	161,517	.....	132,221
Railroad company.....	164,201	120,808	.....	43,393

From the record it appears that these companies expected the new tariffs would result in increasing their revenue of approximately 20 per cent with a loss in number of passengers of approximately 10 per cent. The foregoing representing actual operation shows that the expectation of these carriers was far from being realized, the Traction company showing less than 2 per cent increase in revenue with a 45 per cent decrease in the number of passengers carried; and the Railroad company a 13 per cent increase in revenue with more than 25 per cent decrease in the number of passengers carried.

At the hearing April 1, 1919, the situation then obtaining was considered, and it was pointed out that a large number of fares had been increased from 5 cents to 10 cents, owing to the increase in the base rate from 5 cents to 10 cents, and that possibly the loss in the number of passengers might to some extent be due to that fact, and the companies were requested to change their minimum fare from 10 cents to 5 cents; this was done under an effective date of May 12, 1919, the Commission by special permission authorizing such change on short notice.

The tariffs of these companies, as corrected, now provide one-way fares based on a rate per mile of 3 cents, minimum fare 5 cents, except that between any two points wholly within the limits of any city or village the fare is 5 cents. Departure therefrom is made by the Traction company in its fare between Jamestown and Lakewood, also between Chautauqua and Mayville, and because of these departures it results in making many of the through fares higher than the sum of the intermediate fares. It has also been disclosed that the mileage used by the Traction company in computing its fares in many instances is not accurate and should be corrected. To do this it was found necessary to have a line survey made from Lakewood to Westfield. This was done and the corrected mileages were

filed with this Commission in September, and the company will be directed to adjust its rate schedule accordingly.

The station Clifton on the Railroad company's line is 2.1 miles from the traffic center and just within the limits of the city of Jamestown, with a fare of 5 cents. The Railroad company's fares from Jamestown to Fluvanna-Elmhurst and all points on its line north thereof are computed at rate of 3 cents per mile on mileage from the Jamestown traffic center and because thereof it makes such fares higher than the sum of the intermediate to and from Clifton. Adjustment in fares should be made in accordance with the foregoing, and the order in this proceeding will so provide.

In August, 1918, and to July, 1919, the Jamestown company's fare was 5 cents between any two points in the city of Jamestown; thereafter it became 7 cents. Because the ownership and operation of these three roads has been in the same family, no contracts were made setting forth the terms on which the line used the tracks, terminal facilities, etc., interchangeably. The operation in the city of Jamestown of the Traction company and the Railroad company have been treated as separate from the Jamestown company, and are so treated herein. But some contracts must soon be made and filed. The city operations of these two interurban lines are either Jamestown system operations, or should be carried on by virtue of and under trackage contracts. If the former, then a 7 cent fare and transfer privilege attaches; if the latter, then the operation is a separate matter, a 5 cent fare obtains and no transfer. This point is covered in the accompanying order.

Statements prepared from the reports filed with this Commission by the Traction company and the Railroad company are attached, marked Schedule "A" and Schedule "B," and show in detail for the year commencing July 1, 1917, and ended June 30, 1918, and the year commencing July 1, 1918, and ended June 30, 1919, the income from operation and other sources and the deductions therefrom. During

the year ended June 30, 1919, the rates, fares, and charges involved in this proceeding were in effect except for approximately one month, and analyzing these statements it appears for the Traction company —

(a) That during such period of time its passenger revenue was increased as compared with corresponding preceding year but \$4846.59, and that its revenues from other sources decreased \$5720.67, a net loss in income from operation of \$874.08.

(b) That there were increases in its operating expenses of \$6001.84; in taxes \$1313.63; in interest on unfunded debt \$4062.51.

(c) That its total gross income from operation was \$131,730.33, which sum was not sufficient to pay its operating expenses of \$133,836.55 in the amount of \$2106.22, and adding to such amount \$12,743.09 for taxes accrued, \$30,000 interest on funded debt, and \$35,073.26 interest on unfunded debt, there is a deficit for the year of \$79,922.57, which amount is \$12,252.06 greater than was such deficit for the corresponding previous year.

The statement for the Railroad company shows —

(a) That during such period of time as compared with corresponding previous year its passenger revenue was increased \$14,786.57; that its revenue from other operations decreased \$9124.71; and that its non-operating revenue increased \$27,090.04. The amount shown as non-operating income is largely in excess of that which would obtain in any year's operation. That this sum appears at this time is due to adjustment made by the Commission in this company's capital accounts. It represents largely lease moneys which were paid by the Erie and the Pennsylvania Railroad companies during period 1913 to January 1, 1919, which were not shown in the company's accounts prior to January 1, 1919.

(b) That there was an increase in its operating expenses of \$817.82.

(c) That its total gross income from operation, excluding \$28,515 amount of abnormal non-operating income, was \$167,047.82, and deducting therefrom the amounts for operating expenses \$139,158.65; for taxes \$5400; interest on funded debt \$25,783.53; and for rents, interest on unfunded debt, and other deductions \$3283.48, there was a deficit of \$6577.84.

It is not necessary in this case to go into the question of valuation and reasonable return as it is clear from the foregoing that the gross operating income of these companies during the period of the year commencing July 1, 1918,

and ended June 30, 1919, was not sufficient to pay their operating expenses and fixed charges. Moreover, the evidence in this case shows that none of the corporate officers or the general manager was paid any sum for their services, nor were any amounts for such services included in any charge against the income of these companies.

The number of passenger fares collected, tickets and cash, as shown by the reports of these companies was for years ended June 30th, as follows:

	<i>Traction Company</i>	<i>Railroad Company</i>
1914.....	945,171	.....
1915.....	849,010	.....
1916.....	733,017	401,872
1918.....	658,654	407,545
1919.....	433,378	324,282

This shows that the number of passengers carried by the Traction company has since 1915 been less each year than it was for the preceding year, the loss as between 1915 and 1919 being more than 50 per cent, and as between 1918 and 1919 approximately 34 per cent.

Prior to the year 1919 the Railroad company showed no loss in the number of passengers carried, but as between 1918 and 1919 the loss was approximately 20 per cent.

The effect which the increased fares applying substantially from July 1, 1918, to June 30, 1919, inclusive, had upon the number of passengers carried is more clearly reflected by comparing the number carried for each quarter of a year ended June 30, 1919, with corresponding quarter of the previous year.

<i>Traction Company:</i>				<i>Per cent of loss</i>
	<i>1917</i>	<i>1918</i>		
July to September.....	243,496	162,379		33
October to December.....	160,950	76,125		52
		<i>1918</i>	<i>1919</i>	
January to March.....		132,788	85,392	35
April to June.....		121,420	109,482	9
<i>Railroad Company:</i>				<i>Per cent of loss</i>
	<i>1917</i>	<i>1918</i>		
July to September.....	187,989	113,703		32
October to December.....	79,833	60,423		24
		<i>1918</i>	<i>1919</i>	
January to March.....		66,379	60,385	9
April to June.....		93,344	89,771	4

Beyond any question these companies should without delay give careful consideration to the facts disclosed in this proceeding. A deficiency in revenue exists and has existed, increasing each year for a long period of time. Such deficit now amounts to \$288,985.28 for the Traction company and \$156,017.50 for the Railroad company.

The fixed capital account of the Traction company amounts to \$1,261,614.12 and of the Railroad company to \$1,267,132.24, a total of \$2,528,746.36. The bonds of the former amount to \$600,000, and of the latter \$1,000,000 authorized but not issued. The item of \$25,783.53, above mentioned, stated to be interest on "funded" debt of the Railroad company, is for interest on short term notes which are to be taken up with proceeds of said bonds when issued. With a total investment in these closely allied trolley roads of over two and a-half millions of dollars, and bonds of one million six hundred thousand dollars, and producing with this margin of nearly a million dollars a deficit, as above shown, discloses a condition which only the corporations themselves can correct.

In a similar case [*Petition of Fishkill Electric Railway Company*, decided March 27, 1919, Opinion No. 396] it was stated "This Commission may make an order for an increase—that is the exercise of a legal power, but it can not create a demand for service at the new rate—that is the result of an economic law. A requested increase may apparently be justified because of a lack of reasonable return; and yet the increase asked might if granted actually result in a decreased instead of an increased revenue. Where a deficiency in revenue must be met, the real problem is to find and fix the rates that will permit the most people to ride and still be high enough to cover costs. These rates may well be called the economic rates. Lesser rates spell bankruptcy; higher rates mean reduced operating revenue and a similar result. When these rates are finally found they measure the economic demand for trolley service in

that community. If the service is more extensive or more expensive than such demand requires, then the system to become and remain solvent must scale sufficient assets or abandon enough of its tracks, or both, to reduce the outgo. The income has reached its limit at that point."

In view of the equity of about a million of dollars on which the owners of these companies are getting a deficit instead of a return, it must be held that the rates complained against are not unreasonable. Certain changes, however, should be made on account of the change in mileage, as shown by the recent survey; also to bring the long and short haul rates into adjustment.

An order has been made accordingly.

All concur.

SCHEDULE "A," CHAUTAUQUA TRACTION COMPANY:

Statement showing income from operation and other sources and deductions therefrom for period July 1, 1918, to June 30, 1919, as compared with the period July 1, 1917, to June 30, 1918:

Item	July 1, 1917, to June 30, 1918	July 1, 1918, to June 30, 1919	Increase	Decrease
<i>Income:</i>	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>
Passenger revenue.....	98,902.41	103,749.00	4,846.59	.....
Other revenue.....	33,702.00	27,981.33	.....	5,720.67
Totals.....	132,604.41	131,730.33	.....	874.08
<i>Deductions:</i>				
Total operating expenses.....	127,834.71	133,836.55	6,001.84	.....
Taxes accrued.....	11,429.46	12,743.09	1,313.63	.....
Interest on funded debt.....	30,000.00	30,000.00	.....	.....
Interest on unfunded debt.....	31,010.75	35,073.26	4,062.51	.....
Totals.....	200,274.92	211,652.90	11,377.98	.....
<i>Net Income:</i>				
Deficit.....	67,670.51	79,922.57	12,252.06	.....

SCHEDULE "B," JAMESTOWN, WESTFIELD AND NORTH-WESTERN:

Statement showing income from operation and other sources and deductions therefrom for period July 1, 1918,

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to June 30, 1919, as compared with the period July 1, 1917, to June 30, 1918:

Item	July 1, 1917, to June 30, 1918	July 1, 1918, to June 30, 1919	Increase	Decrease
<i>Income:</i>	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>	<i>Dollars</i>
Passenger revenue.....	116,943.68	131,730.25	14,786.57	.....
Other operating revenue.....	44,442.28	35,317.57	.....	9,124.71
Non-operating income.....	1,424.96	28,515.00	27,090.04	.....
Totals.....	162,810.92	195,562.82	41,876.61	9,124.71
Less abnormal non-operating income.....	.....	28,515.00	.....	.....
Totals.....	.....	167,047.82	.....	.....
<i>Deductions:</i>				
Total operating expenses.....	138,340.83	139,158.65	817.82	.....
Taxes accrued.....	5,400.00	5,400.00	.....	.....
Interest on funded debt.....	.....	25,783.53	25,783.53	.....
Rents, interest, and all other deductions, excluding interest accrued on funded debt.....	5,414.41	3,283.48	.....	2,130.92
Totals.....	149,155.24	173,625.66	24,470.42	.....
Net income, profit.....	13,655.68	.....	.....	.....
Net income, deficit.....	.....	6,577.84	.....	.....

In the Matter of the Complaint of EDWARD M. KRIER of Freeport, L. I., *against* NASSAU AND SUFFOLK LIGHTING COMPANY as to the shutting off of gas service from complainant's residence, and refusal to restore such service. [Case No. 7107.]

Decided December 2, 1919.

Appearances:

Henry MacDonald, Esq., attorney for respondent.

William Rappeport, Esq., auditor, and *Cyrus Stewart, Esq.*, as construction foreman, of respondent.

BARHITE, Commissioner:

A former customer of the Nassau and Suffolk Lighting Company makes complaint that the company has shut off the gas service from his residence and refuses to restore the same. The facts are as follows: The customer in question had neglected to pay his monthly bills as required by the rules of the company. Orders were given by the proper official to cut off the service. The foreman to whom the order was given, before beginning the work as directed, went to the office to ascertain if the bill had been paid and found that the amount was still due to the company. The workmen employed for that purpose dug down in the street to the service pipe leading from the main to the consumer's dwelling and disconnected the same. There was no curb cock, so that the method employed was the only way that the disconnection could be made outside of the customer's property. The company claims that previously permission to enter the house and remove the meter had been demanded and refused. While the men were at work the wife of the customer went to the office of the company and paid the amount due. When she returned the disconnection had been made and the work finished. The company now demands a deposit

of \$25 before restoring service, to pay for the expense of disconnecting the pipes and connecting them for further use. Our view of the matter makes it unnecessary to determine whether the required charge is reasonable in amount.

Under sections 62 and 63 of the Transportation Corporations Law, the complainant is entitled to have his service restored within ten days after he makes a written application, and in addition, if the company so requires, he deposits a reasonable sum as security for the service for two calendar months. Section 62 also provides that if required by the company the applicant shall deposit with the corporation a sum of money sufficient to pay the cost of his portion of the pipe or wire required to be laid and the expense of laying such portion.

Section 65 of the Transportation Corporations Law also provides that if any person supplied with gas refuses to pay the remuneration due for the same, the company may prevent the gas from entering the premises of the consumer, and the employees of the company may, between the hours of 8 o'clock a. m. and 6 o'clock p. m., enter the premises and may disconnect any meter or other property from the mains.

If we examine the schedules and the rules and regulations of the company filed with this Commission, we find only two provisions which require notice: One is to the effect that a charge will be made for all work done on consumer's premises; and the other is practically a reiteration of the terms of the statute, and provides that the company's agents shall have the right of free access to the consumer's premises at all reasonable times for the purpose of inspecting, reading, or exchanging the meter or removing the company's property. An examination of the statutes and of the company's rules and regulations shows no warrant for a charge to restore service to the complainant. No work is required upon the customer's premises; the pipe was disconnected in the street; there is no necessity for furnishing or re-laying any new or additional pipe.

When the complainant refused to pay his account the company had the right, under the statute, to refuse to furnish him with gas, and the law points the way in which the premises may be disconnected from the company's mains, and although the customer may have refused access for the purpose of removing the meter or doing other necessary work, yet by invoking the aid of the courts entrance could have been forced. The company did not adopt the method provided by statute but followed a course of its own. The statute may provide a way which is inconvenient, or as expressed by the attorney for the company upon the hearing, "almost impracticable," but, nevertheless, the method provided by statute must be followed if, as here, reimbursement is asked for the expense incurred, and then such expense can only be made good when the statute provides for such course.

The complainant is entitled to be again furnished with gas upon complying with such conditions as the law authorizes the company to impose.

All concur.

In the Matter of the Complaint under sections 71 and 72, Public Service Commissions Law, of the TRUSTEES OF THE INCORPORATED VILLAGE OF BATH, Steuben county, *against* THE BATH ELECTRIC AND GAS LIGHT COMPANY as to increase in rate for gas. Also complaint of the company, in its answer, asking that the increased rate be sustained. [Case No. 6531.]

Decided December 2, 1919.

Appearances:

Floyd W. Annabel, Bath, for the Trustees of the Village of Bath.

Theodore J. Grayson, 1327 Real Estate Trust Building, Philadelphia, Penna., for respondent.

FENNELL, Commissioner:

It appears in this case that the company first started in business in 1854, was incorporated in 1883, and consolidated with the Electric Illuminating and Power Company in 1900. It formerly furnished both gas and electricity. On August 5, 1908, the Public Service Commission granted permission and approval to construct and to exercise certain franchises to the Citizens Electric Service Company of Bath. For the reasons given by Chairman Stevens in his Opinion in that case, the Citizens company was permitted to construct and operate an electric plant in the village of Bath although at that time the respondent company herein was furnishing gas and electricity. In 1914 [Opinion No. 191, Case No. 4404] a municipal plant was authorized. Because of the operation of the municipal plant the respondent company gradually lost all of its electric business and is now furnishing only gas.

The company's condition is indicated by the following:

Bonds at 5 per cent, due 1940.....	\$140,000.00
Capital stock.....	100,000.00
Bills payable.....	81,800.00
Accrued interest.....	23,333.33
	<hr/>
	\$294,933.33

Adding some smaller items brings this total to about \$300,000, which is about twice the value claimed by the company and six times that conceded by the village.

The company claims it is entitled to a return upon \$152,379.70 consisting of —

Invested capital		\$104,879.70
and intangible capital as follows:		
Development expenses, estimated at.....	\$10,000	
Accrued depreciation unearned, estimated...	25,000	
Deficiency of return on 8 per cent basis, estimated.	12,500	
		<hr/> 47,500.00
		<hr/> \$152,379.70

The company also claims its operating expenses for 1918, including taxes and uncollectible bills, and which amounted to \$17,617.65, were necessary and reasonable.

The village urges that the investment is not in excess of \$56,569, and refuses to accept the items of \$10,000 for development expenses, \$25,000 for accrued depreciation, and \$12,500 for deficiency of return. The village also insists that the proper operating expenses, including taxes and uncollectible bills, should not exceed \$13,352.24.

Having in mind the claims of both sides, and working with the annual report for 1918 (this report is based on figures determined in previous capitalization cases), the fixed capital account is as follows:

Land devoted to gas operations.....	\$350.00
General equipment.....	372.53
Works and station structures.....	12,134.14
Holders.....	9,556.32
Furnaces, boilers, and accessories.....	1,090.38
Miscellaneous power plant equipment.....	354.46
Water gas sets and accessories.....	6,277.56
Purification apparatus.....	2,000.00
Accessory equipment at works.....	2,112.27
Trunk lines and mains.....	20,239.64
Gas services.....	6,822.55
Gas meters.....	8,482.15
Gas meter installation.....	607.61
Gas tools and implements.....	415.00
Gas laboratory equipment.....	18.29
Engineering and superintendence.....	5.05
Injuries during construction.....	50.50
	<hr/> \$65,883.40
Allowance for working capital.....	6,500.00
Total investment.....	<hr/> \$72,383.40

The three items of intangible capital can not well be allowed in this case.

Where no proof is given as to the actual development expenses, either at the time of the development of the business or at any time since, a mere estimate of what might be appropriate for some new company, just starting in, is not sufficient. There is no proof to show that any such amount ever was expended. If such amount was expended, there is nothing to show that it was not absorbed from rates in the earlier years of the operation of the company. This estimated expenditure can not be allowed.

The company's claim to an addition to its capital account of \$25,000 to measure the accrued depreciation of the plant, but which accrued depreciation has not been met because of lack of earnings, can not be allowed. This company has met very severe financial difficulties, and it may well be that it can not meet its interest charges and set aside a sufficient sum for up-keep of plant. Inasmuch as its bonded debt is nearly twice as large as its valuation and the company is entitled to a return only upon the valuation, it can readily be seen that there was no margin to work on and no inducement to set aside a sufficient reserve for accrued depreciation. Some small amounts have been set aside for such accruals, but these amounts are very small compared with the usual and customary amounts set aside by companies engaged in the same business, operating plants of a similar size. The evidence not being sufficient to determine the actual depreciation of the physical property, and the company not having set aside a reasonable amount to meet the depreciation accrual, it seems best, all things considered, in this case and at this time, and in view of the disposition of the case as hereinafter indicated, to make no deduction for amortization of capital.

In such a case as this, with the failure to make provision for accrued depreciation, the company should not be entitled to include its deficiency of return, on an 8 per cent basis, to be included in the sum on which it is entitled to earn further returns. This company, with its past history (see

Opinion above cited) and under existing circumstances, can not expect to make the same profit which a company having a reasonably modern plant and without the overload of bonds should make.

While this company is entitled to a reasonable return on the value of its property used in the public service, the public is entitled to have the company keep the property up to date and to expend a reasonable amount for renewals and replacements. A fair amount to set aside annually for this purpose for this company would be about $2\frac{1}{2}$ per cent on its fixed capital of \$65,883, or \$1647. Therefore the rates permitted in the accompanying order are based upon the inclusion and expenditure as an operating expense, of the sum of \$1500, which sum it is expected the company will annually set over into its reserve for accrued depreciation, and which reserve it will continue to maintain and the funds of which it will utilize from time to time to bring this property up to a better condition.

The amount of gas made during the year 1918 as compared with the sales shows a leakage of approximately 15 per cent. This is about 5 or 6 per cent greater than the average, and the recognition of \$1500 to meet accrued depreciation as an annual operating expense is meant, among other things, eventually to include such replacements and renewals as will cut down this wastage through leakage.

The following charges for expenses may well be questioned, in whole or in part, as indicated:

Item 1. Engineer and General Manager's salary.....	\$600.00
This item not allowed. A plant so small as this ought not to have charged against it salary for an engineer and general manager who has his headquarters in Philadelphia and looks after the plant from long range. The condition of the company hardly warrants such service.	
Item 2. Taxes on electric plant.....	300.00
This should not be considered as a charge against the gas plant.	
Item 3. Extra. fees for tax collection.....	50.33
Item 4. Generator fuel.....	\$2,164.00
Interest charges on delayed payments for generator fuel	19.25
The company has charged 78.8 lbs. of generator fuel per M cubic feet of gas made. 50 lbs. of fuel per M should be sufficient, making a deduction of 32.25 per cent from \$2,144.35, of.....	
	691.55
Item 5. Gas oil, \$4,753.69. Interest on deferred payments for gas oil.....	3.84

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The company has charged gas oil to the extent of 5.04 gallons per M cubic feet of gas made. 4.0 gallons per M cubic feet should be sufficient, making a deduction of 20.64 per cent from \$4,749.85, or..... \$980.88

Total deductions from the company's operating expenses.. \$2,645.85

Allowing \$145.35 for possible variations in the items relating to generator fuel and gas oil, it may reasonably be said that the company's expenses for 1918 should be reduced by \$2500.

Allowing \$380.50 for possible variations in the items relating to generator fuel and gas oil, it may reasonably be said that the company's expenses for 1918 should be reduced by \$2500.

Using the valuation of \$72,383.40, and making adjustments as above mentioned for the year, the following is produced:

Gross revenue.....		\$18,927.63
Operating expenses.....	\$17,617.65	
Deduct from operating expenses for reasons above stated.....	2,500.00	
	<u>\$15,117.65</u>	
Add for depreciation reserve for reasons above stated.	1,500.00	
		<u>16,617.65</u>
Gross income.....		\$2,309.98
Rate of return.....		.081

The actual revenues for one full year under the new rates, August 1, 1918, to July 31, 1919, amounted to \$20,186.01.

Prior to August 1, 1918, the company's rate for gas was \$1.50 per thousand cubic feet with a monthly service charge of 50 cents and a discount for prompt payment of 15 cents per thousand cubic feet. Under the new schedule the price is \$2.50 per thousand cubic feet, with a minimum charge of 50 cents per month and a discount of 10 cents per thousand cubic feet for prompt payment. No service charge is included in the new schedule.

On December 31, 1918, there were reported to be 585 meters in service, and for that year the total sales of gas were 9413 M cubic feet, which would result in an average monthly consumption per meter of 1.3 M cubic feet.

Such a low average consumption indicates that there are many consumers who are using gas in quantities at or about the minimum. The consumers at or slightly above the minimum are not paying their equitable share of the "readiness to serve" expenses of the company because the amount they pay in the consumption charge is so small as not to absorb a fair proportion of such expenses. There are well recognized expenses of a gas company that are incurred annually by keeping its plant connected to the gas fixtures and appliances on consumers premises and standing always ready to serve one or all of its consumers with gas at any time. These expenses are in addition to the actual cost of making the gas itself. The company must meet its operating costs but it makes little difference to it whether the revenue comes from "minimum bills" or "service charges". The minimum charge seems to be unfair to the consumers who are using considerably more than the minimum.

An example will show this. Take a gas company about the size of this one, and assume the following round figures:

Annual expenses.....	\$18,000.00
Annual "readiness to serve" expenses.....	\$3,000.00
Number of meters.....	500
Price of gas per M cu. ft.....	\$1.00
Minimum monthly consumption charge.....	\$0.50

Annual expenses (\$18,000) less "readiness to serve" (\$3000) equals gas production cost (\$15,000), a gas production cost ratio of $83\frac{1}{3}$ per cent and "readiness to serve" cost ratio of $16\frac{2}{3}$ per cent. Thus in the cost of each 1 M cubic feet of gas, $83\frac{1}{3}$ cents is spent for making gas and $16\frac{2}{3}$ cents is spent for readiness to serve. A consumer using 500 cubic feet pays 50 cents. He pays for gas one-half of $83\frac{1}{3}$ cents, or $41\frac{2}{3}$ cents; and for readiness to serve, $8\frac{1}{3}$ cents. The readiness to serve expenses (\$3000) divided by the number of meters (500) equals \$6 per year per meter, or 50 cents per month. Therefore, the consumer who uses 500 cubic feet of gas and pays 50 cents, only pays toward the readiness to serve expenses $8\frac{1}{3}$ cents instead of 50 cents. If the assumption is reasonably accurate, that 50 cents a

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month is a fair readiness to serve charge, then such a consumer has had $41\frac{2}{3}$ cents worth of gas contributed to him. This contribution is not made by the company but by his fellow consumers in proportion as they use larger amounts of gas. It may be intended that the larger consumers should carry the smaller ones, but it is doubtful if the smaller consumers will want or permit this when they fully understand the matter.

A readiness to serve charge of 50 cents per month should be substituted in place of the minimum consumption charge, making the rate \$2 per M cubic feet, with a readiness to serve charge of 50 cents per month, and restoring the former discount of 15 cents per M cubic feet for prompt payment.

On the basis of such a revision of rates, the following estimate for the year 1919 is developed:

Readiness to serve charge based on 585 meters, at 50 cents per month		\$3,510
9413 M cubic feet of gas, at \$2.....	\$18,826	
Less discount of 15 cents per M.....	1,412	17,414
Total revenue from gas.....		\$20,924
Expenses as per adjustment outlined.....		16,618
Gross income		\$4,316
Return on \$72,383.....		5.9%

For the twelve months during which the new rate was in effect, it appears that sales were less than during the year 1918, the total revenues being \$20,186, and the lowest possible rate \$2.40 which without considering minimum charge would allow sales of not more than 8411 M cubic feet, or approximately 1000 M cubic feet less than during the year 1918. Using such sales as a basis, and without reducing the number of meters in service, the estimate for a year would be as follows:

Readiness to serve charge based on 585 meters, at 50 cents per month		\$3,510
8411 M cubic feet of gas at \$2.....	\$16,822	
Less discount of 15 cents per M.....	1,262	15,560
Total revenue from gas.....		\$19,076
Expenses based on adjusted cost for 1918 less 75 cents per M cu. ft. of decreased sales (decreased sales 1,000,000 cubic feet)		15,866
Gross income		\$3,210
Return on \$72,383		4.4%

It may fairly be held that the above calculations show that neither the present rates nor those herein suggested are over compensatory. However, they are so high as to restrict what should be the full normal use of such a utility to the public it serves and show that the high water mark, from a practical standpoint, has been reached if not already passed.

The schedule of rates should be modified as above indicated by providing that the price of gas shall be not in excess of \$2 per M cubic feet, with a service charge of 50 cents per month and a discount of 15 cents per M cubic feet for prompt payment.

An order has been made accordingly.

All concur.

IN the Matter of the Complaint of RESIDENTS OF THERESA, Jefferson county, AND OTHER PLACES *against* UNITED STATES RAILROAD ADMINISTRATION, NEW YORK CENTRAL RAILROAD, asking for better passenger train service in Northern New York. Application for rehearing. [Case No. 7012.]

Facts of the case discussed, and application for rehearing denied.

Decided December 4, 1919.

Appearances:

H. M. Ingram for the Potsdam Business Men's Association.

Paul B. Murphy for the St. Lawrence Transmission Company.

A. J. Hanmer as Village Attorney of Massena, and as Secretary of the Massena Board of Trade.

V. Dorset for the Aluminum Company of America.

Purcell, Cullen & Purcell (by Francis E. Cullen) for the United States Railroad Administration, New York Central Railroad.

Lawrence Russell as attorney for the Village of Canton and others.

KELLOGG, Commissioner:

Under date of November 18, 1919, this Commission made an order directing that train No. 17 on the St. Lawrence division of the New York Central railroad be delayed in its departure from Watertown until 7:30 a. m., so as to make connection at Philadelphia with the train arriving at 8:10 a. m. from Ogdensburg; and also directing necessary minor changes in connecting trains. Various parties in Canton and Potsdam applied for a rehearing, urging that the later scheduled arrival of train No. 17 consequent upon this order of the Commission would be detrimental to the interests of their communities.

A hearing upon this application was appointed to be held at Watertown on December 1st. The matter was then argued at length by the applicants for rehearing, who were joined by representatives of the village of Massena also urging the revocation of the order.

The order of this Commission postponing the scheduled departure of this train so as to permit a uniform connection at Philadelphia, thus somewhat delaying its arrival at points farther to the northeast, is based upon two conditions which most plainly appear.

In the first place, the train now does not, on account of delays for connection, make the time required by its present schedule, and in fact was on time in Philadelphia only eighteen times of its ninety-three trips preceding November 11th. Conditions have not improved since.

The earlier departure of the connecting train No. 60 from Ogdensburg, suggested by some of the applicants, would not be advisable because of the usual lateness of No. 17 at Philadelphia. This train No. 60 now takes one hour and forty minutes to make the run of 47.21 miles from Ogdensburg to Philadelphia, at the rate of twenty-eight and one-third miles per hour. It should be operated so as to arrive at Philadelphia two minutes earlier, or 8:08 a. m., permitting transfer of passengers and departure of No. 17 at 8:10 a. m.

By permitting an additional scheduled wait at Watertown of twenty-five minutes for the arrival of the connecting train, and the transfer of cars and express, the connection could be regularly made at Philadelphia; and the usual lateness of the train be absorbed up to that length of time.

Another condition which became prominent in the consideration of the case is the fact that the train, though it was late at Philadelphia, frequently made up its time before its arrival at Massena Springs, even when sufficiently late at Philadelphia to make the desired connection.

It therefore became apparent, if the advertised time of

departure of this train from Watertown was delayed as suggested, and connection was made at Philadelphia, the train would actually be running nearly if not entirely as early as it does under its present schedule; and furthermore, under proper operation, the train could arrive at Massena Springs at practically the same time as it now is advertised to arrive there, 10:30 a. m.

The running time now from Philadelphia to Massena Springs, a distance of seventy-one miles, is two hours and three-quarters: an average of twenty-five and nine-elevenths miles an hour. If the train left Philadelphia at 8:10 a. m., as proposed by the order of the Commission, and arrived at Massena Springs at 10:30 a. m., its present advertised time of arrival, it would be covering the distance in two hours and fifteen minutes, or at the rate of only thirty-one and five-ninths miles an hour. Considering the relatively easy grades upon this road, this run, with proper equipment, can be made under ordinary conditions with entire safety, as it has frequently been made since the change of time at present in effect.

The division of steam railroads of this Commission has been requested to work out a tentative schedule showing the proper and safe operation of this train in accomplishing the desired result, as follows: Philadelphia, 8:10; Antwerp, 8:21; Keenes, 8:30; Gouverneur, 8:46; Richville, 8:58; DeKalb Junction (A), 9:09; DeKalb Junction (L), 9:14; Canton, 9:28; Elen, 9:40; Potsdam, 9:55; Norwood, 10:10; Plum Brook, 10:20; Massena Springs, 10:30.

It will be seen that under the proposed schedule the arrival at Canton is eighteen minutes later, and at Potsdam is fifteen minutes later than is now scheduled, but as a matter of fact this is not substantially later than the train usually passes these stations under present conditions.

From the facts developed on the original hearing, which were emphasized upon the application for rehearing, it is quite apparent that the order of the Commission is entirely

correct. The proposed connection at Philadelphia should not be done away with for the saving to the communities farther to the northeast of a few theoretical minutes, which as a matter of actual experience such communities seldom enjoy and never can depend upon. With the added delay permitted at Watertown this train should always be on time, except under extraordinary conditions.

The application for a rehearing should therefore be denied.

All concur.

IN the Matter of the Complaint of PURCHASERS OF NATURAL GAS IN THE VILLAGE OF ANDOVER, Allegany county, against EMPIRE GAS AND FUEL COMPANY, LIMITED, as to price of natural gas in Andover. [Case No. 6958.]

Decided December 4, 1919.

Appearances:

Francis M. Cameron, Esq., as attorney for complainants, and for Andover Chamber of Commerce.

Hon. Fred A. Robbins as attorney for respondent.

BARHITE, Commissioner:

This is a complaint made by the purchasers and consumers of natural gas in the village of Andover, Allegany county, New York, against the Empire Gas and Fuel Company, Limited. The company furnishes gas to a number of villages and hamlets in the southern part of the State. It also furnishes natural gas to the Hornell Gas Light Company, which latter company supplies the public in the city of Hornell. The rates charged the public in Hornell and in all other places served are uniform. During the year 1918 the company furnished 1,146,466 thousand cubic feet to its customers. The supply is drawn from 1176 wells situated in New York state and in Pennsylvania. In the latter State the wells are owned by the Empire Gas and Fuel Company of Pennsylvania. The two companies while separate corporations are practically the same; both corporations have the same stockholders, and the principal officers are the same. The company also purchases some gas from the December Oil Company. There are two hundred and sixteen wells in the township of Andover, including seven wells within the corporate limits and one well about one-half mile from the village limits. The eight last named wells flow directly into the low pressure distributing system of the village, pro-

ducing only 14,640 cubic feet of gas per day of twenty-four hours. Under leases made with the owners of the property upon which these wells are situated an unlimited supply for the buildings upon the premises is reserved; consequently, in severe weather, the gas from these wells is almost entirely used upon the premises where the wells are situated. About nine and forty-one one-hundredths per cent of the gas used in Andover comes from these eight wells, although as indicated at certain times a much smaller percentage reaches the inhabitants of that village. Some of the gas used in Andover comes from Pennsylvania.

The corporation charges a uniform price for gas throughout the territory in which it operates. The claim of the complainants is that Andover being in the heart of the gas belt should not pay as much for gas as other communities twenty miles or more from the gas fields; that the pipes and other apparatus needed to supply the more distant communities are not needed for the requirements of the cities and villages near at hand to the source of supply; and the question whether the company should discriminate in rates between its customers who may be far away or near at hand is presented for the determination of the Commission.

The contention of the complainants has some basis of merit, and where the conditions and circumstances warrant should be considered, but the theory which underlies the contention can not be carried to the extreme limit; if, for example, a discrimination in price should be made between citizens of Andover and citizens of Hornell because less expense is involved in supplying the customers in the village than those in the city, then, with equal logic, a difference in rate should be made between customers in the same city, because those who lived near at hand to the point where the gas enters the city should pay less than those who use the gas in the most distant part of the municipality. Those who live between the village and the city should pay a still different rate. Under the same course of reasoning with

regard to manufactured gas, those who live near the works should enjoy a more favorable rate than those who receive their supply through miles of pipes. Such a basis for rate making if not impossible would be impracticable. Furthermore, the mains of the company are tied together and all parts of the system receive the benefit from all sources of supply. Furthermore, to carry out the theory of the complainants would compel the company to so divide its mains that any particular community would receive benefit only from the wells near at hand. To compel the company to take this course would not in the language of the statute be "just and reasonable". In determining the price to be charged for gas the Commission is given permission to "consider all facts which in its judgment may have any bearing upon a proper determination of the question".

It follows that the proceeding should be dismissed and the case closed on the books of the Commission.

All concur:

In the Matter of Rate of Speed of Milk Trains Drawn by
Classes P and W Locomotive Engines on New York,
Ontario and Western Railroad. [Case No. 7116.]

Locomotive engines should not be operated at such high rates of speed as to cause discomfort to engineers and firemen riding thereon, so great as to result in danger to the health or impairment of the efficiency of such engineers and firemen.

Facts examined and foregoing principle applied to the operation of certain locomotive engines on the New York, Ontario and Western railroad.

Decided December 11, 1919.

Appearances:

Thomas E. Ryan, 51 Albany Trust Building, Albany, Legislative Representative of the Brotherhood of Locomotive Firemen and Enginemen.

W. C. Whish, 91 North Hawk street, Albany, Representative of the Brotherhood of Locomotive Engineers.

C. L. Andrus, Grand Central Terminal, New York city, Attorney for New York, Ontario and Western Railway Company.

KELLOGG, Commissioner:

During August, 1919, this Commission was informally advised that milk trains on the New York, Ontario and Western railroad were being hauled by locomotives of the consolidation type known as Classes P and W. It was charged that these locomotives could properly be used only in slow moving trains, and that when their speed was developed to a point necessary to maintain the schedules of the milk trains in question, the operation was attended with so much shake and jar that the engineer suffered serious discomfort, which if continued would be seriously detrimental to his health; and it was also claimed that the

engineer, under such conditions, was unable properly to discharge his duties.

The engines of this type have four pairs of driving wheels and a single engine truck. It was suggested that the comfort of the engineer would be very much increased by the installation of a trailer wheel under the cab. A change in the form of construction, however, would require the re-building and re-balancing of the engine, and does not appear to be feasible.

These engines are designed for hauling heavy freight trains, and as appears from the record can be operated at 45 miles an hour.

On August 27, 1919, an inspector of this Commission rode on one of these engines from Norwich to Sidney, for the purpose of observing its operation, and his experience and opinion obtained from such inspection appears in the record.

Upon a hearing held at Albany November 25, 1919, various witnesses were sworn. Messrs. Whish and Ryan, representatives of the engineers and firemen, recited their experience and opinion in reference to these engines; the inspector of this Commission, Mr. Gill, was sworn as a witness; and Messrs. Rennie, Peters, and O'Neil, the latter being the road foreman of engines on the line, were sworn in behalf of the railroad management.

Upon this hearing it was satisfactorily established that these engines were not adapted for operating at high rates of speed without discomfort to the occupants of the cab, and that the discomfort became so great at the higher rates as to become an unnecessary hardship, which would in time result in injury to the health of the engineer, and perhaps to some extent interfere with his ability to grasp quickly and unerringly the various levers under his control and necessary for the proper operation of the engine.

A serious dispute exists as to what the rate of speed is at which this shaking of the cab commences to become a

disadvantage to such an extent as to become an unnecessary hardship and therefore improper. The representatives of the engineers and firemen claimed that twenty miles an hour was the maximum speed. Representatives of the Railway company asserted that the engines could be regularly operated at thirty-five miles an hour without serious inconvenience. The speed limits prescribed in the timetable issued by this company on June 29, 1919, and effective when this controversy arose, restricts the operation of first class trains drawn by these engines, which includes milk trains in the same timetable, to twenty-five miles an hour. Later, on November 2, 1919, this was changed to thirty-five miles an hour, under claim on the part of the company that the previous limit was a clerical or other mistake.

Having given careful consideration to all the evidence submitted on this disputed point, it may be somewhat confidently asserted that these engines can be driven up to a speed of thirty miles an hour without affecting the health of the engineer. It is also possible that in some cases the engine could be accelerated up to a speed of thirty-five miles an hour without any improper result, but the development of any greater speed would entail discomfort and danger which can not properly be required or permitted.

The present schedule of these milk trains on which these engines are used requires an operation between stops at an average of about thirty miles an hour. On certain parts of the run the scheduled speed between stops is somewhat less, and on a few occasions a trifle more. In actual experience it appears from the evidence of the inspector of the Commission, and also from the evidence of all the witnesses called by the railroad, who rode on these trains and gave evidence before the Commission, that in order to make this scheduled run, much higher speed is developed at certain points. That is, the delay in getting away from stations on scheduled time, and the loss on grades and other points where much less

speed than thirty miles an hour is possible, requires a much greater speed at times to make up the average. The speed on the ordinary run of these trains is advanced in certain instances to as high as forty-five and even forty-eight miles an hour, according to the testimony of these witnesses. This condition is not a proper one, and should not be continued.

If these engines are to be used in hauling these trains, the schedule should be so altered as to permit the transaction of the ordinary business of the train and its movement between stations so that at no point shall its speed exceed thirty miles an hour at the maximum, except in emergent cases or where from unavoidable delays it is desired for short distances to accelerate the speed to thirty-five miles an hour to make up time. The latter speed, however, should never be exceeded, and even if permitted to operate at the speed suggested the engines must be in good first class condition. The operation of these engines at any higher rate of speed than that suggested would be detrimental to the health and efficiency of the engine employees.

It is therefore recommended that an order be entered herein providing that engines of the type in question shall not be operated on trains upon schedules requiring a speed at any point in excess of thirty miles an hour, except that under emergent conditions and in cases of unavoidable or unexpected delay the maximum speed of such trains may be increased to thirty-five miles an hour, but that in no cases shall such engines be operated at a speed to exceed thirty-five miles an hour, and that such maximum speeds are permitted only in case the engines are in first class condition and good repair.

Chairman Hill and Commissioners Irvine and Fennell concur; Commissioner Barhite not present.

In the Matter of the Petition or Complaint of WESTERN NEW YORK AND PENNSYLVANIA TRACTION COMPANY under subdivision 1, section 49, and section 181, Railroad Law, as to increasing passenger fares. [Case No. 6980.]

After an examination of the operations of the petitioner since its former petition for an increase of rates, it was permitted to charge a maximum fare of four and one-half cents a mile on its interurban lines within the State and a maximum fare of eight cents within each of the cities of Olean and Salamanca, the city rate to apply also to inter-urban travel within the cities.

Wages, like other items of operating expense, are to be allowed only so far as they are reasonably incurred. In this case they were computed, not by the demands of the employees, but according to the average wage of employees on comparable systems.

The practical results of increased fares should be kept in view. In spite of the needs of increased revenues the rates should not be made higher than passengers are able or willing to pay, and should be kept within the means of all travelers if possible so to do and permit operations to continue.

Decided December 16, 1919.

Appearances:

James P. Quigley, 142 North Union street, Olean, as attorney for applicant.

Foster Studholme, Mayor, and *John K. Ward*, City Attorney, for the City of Olean.

Clare Willard, President, and *John K. Ward*, attorney, for the Village of Allegany.

Jesse M. Seymour, City Attorney, for the City of Salamanca.

IRVINE, Commissioner:

This application is by the Western New York and Pennsylvania Traction Company to fix maximum fares to be

charged for the carriage of passengers at ten cents in the city of Olean and the city of Salamanca, and four and one-half cents a mile on the remainder of its system in this State. In September, 1918, the Commission decided a previous application of the company to increase fares theretofore existing. [*Petition of Western New York and Pennsylvania Traction Company*, 7 P. S. C. 2nd Dist. 224.] As a result of that proceeding, a maximum fare in the two cities of seven cents was permitted, and a mileage rate of three and one-half cents per mile on the remainder of the system. The railroad operated by the company is described in the Opinion just cited and its condition at that time is therein discussed. It is unnecessary to repeat these matters in connection with the discussion of the pending case. It was thought at the time of that decision that while the rates allowed would not be sufficient to afford an adequate return on the investment they would be sufficient to operate the system, reasonably maintain it, pay interest on its bonds, and yield sufficient in addition to pay fixed dividends on its preferred stock. It is a matter of surprise as well as of regret that the prognosis then ventured has apparently not been realized. Therefore, in addition to a careful examination of the evidence presented on the pending application, an exhaustive study has been made of the affairs of the company by the electric railroad division of this Commission, resulting in a report going into such details that it is impracticable even if it would be desirable to incorporate it or even a summary thereof in this Opinion. Annexed to the report are twenty tables of statistics and estimates based upon the evidence and the reports of the company. This report is in the files of the Commission, open to inspection.

The decision in 1918 was based largely upon an examination of the income account of the company for the years 1916 and 1917, and for the first three months of 1918 in

the case of the interurban operations. In the cities of Olean and Salamanca actual figures were available for the first four months of 1918. The figures for 1918 were based on the hypothesis that the rates authorized were in force during the entire year. For the system, the revenue on this hypothesis was estimated at \$590,000. The actual revenue was \$475,276. The difference may be accounted for by two factors: in the first place, for more than three-quarters of the year the old rates were in force; and in the second place, the epidemic of influenza in the Fall of 1918 undoubtedly operated to decrease unduly the revenues after the increase in rates. It is, therefore, impossible to draw any inference of value from a comparison of the estimate then made with the actual results of operations in 1918. We have, however, the actual results of operations for the first six months of 1919. In this period the revenue amounted to \$276,255.46, indicating by doubling a revenue for the year of \$552,510.92; but, as experience has shown, the revenues for the second half of the year to be somewhat larger than for the first half, the estimated revenue of \$590,000 based on 1918 operations would not be far from the actual results in 1919 were it not that the operations of the company were entirely suspended for a considerable period in the late Summer and early Fall by a strike of the employees.

The actual operating expenses for 1918 were \$330,533. They were estimated at \$360,000. In the estimate an increase of 25 per cent was projected throughout the year to meet then recent increases in expenses and especially an increase in the pay of employees. Of course this increase is reflected only in the actual results from the time the increase was actually made. It is felt, therefore, that the estimate made in 1918 was approximately correct under circumstances then existing. As the revenue seems to bear out the estimate we are relegated to an examination of

present and prospective operating expenses, and must ascertain wherein if at all the estimate of 1918 failed to forecast the actual expenses of the current year and the probable expenses of 1920. It was stated in the former Opinion that the wages of motormen and conductors in the early part of 1918 ranged from twenty-one to twenty-seven cents an hour according to the length of service. This rate was increased prior to the present application to one ranging from twenty-seven to thirty-three cents per hour. The failure of the company to increase this rate to fifty-five cents an hour resulted in the strike above referred to. The Commission should not without question permit an increase in rates in order to permit the payment of such wages as may be demanded by employees. The so called platform expenses of an electric railroad constitute a very large proportion of its operating expenses, and the Commission should see to it that that item, like all other items of expense, is reasonably incurred before permitting it to be loaded upon the public in the form of increased rates. In considering the present plight of the company the Commission has, therefore, not based its calculations merely upon the demands of the employees, but has endeavored to estimate platform expenses on the basis of average wages prevailing for motormen and conductors on comparable systems. This is substantially higher than the rates heretofore paid but much lower than those insisted upon by the employees at the time of the hearing.

The system has been economically managed in the past, too economically managed for its permanent good, but the economies were forced by continuing inadequacy of revenue. Some light may be thrown on this by the following table comparing certain items with corresponding items on other systems within the State with which comparison may fairly be made.

	W., N. Y. & P. Tr.	Schenec- tady Ry.	Hudson Valley	P., J. & G. R.R.	So. N. Y. P. & Ry. Corp.
Operating ratio.....	69.55	87.20	76.77	68.19	70.41
Maintenance of way per car-mile.	4.75¢	5.22¢	6.50¢	5.51¢	5.16¢
Maintenance of equipment per car-mile.....	5.16¢	5.39¢	5.92¢	5.18¢	3.12¢
Power expenses per car-mile.....	2.69¢	5.95¢	*15.05¢	4.10¢	6.05¢

* Based on actual power cost; recouped in part by sale of surplus; actual cost about 5 cents.

There is a very considerable amount of deferred maintenance which must be taken care of if the road is to continue to operate with safety. A still greater amount is necessary in order to bring it to standard efficiency. The company has included in its estimates more than can reasonably be charged against revenues in the immediate future. The items of maintenance and other expenses have been carefully considered by the Commission's electric railroad division on consultation with company officials, with the following result:

	Estimate W., N. Y. & P. Tr. Co.	Estimate P. S. C. E. Ry. Div.
Maintenance of way and structures.....	\$246,541	\$121,537
Maintenance of equipment.....	75,874	82,122
Power expenses.....	75,147	63,279
Operation of cars, superintendence of transportation.....	171,045	180,012
Traffic expenses.....	15,859	21,776
General and miscellaneous expenses.....	70,404	67,968
Total railway operating expenses.....	\$654,870	\$536,694

This discloses a probable operating expense for 1920 of \$536,694 as against the estimate of last year of \$360,000. Of the difference, almost \$70,000 is in the item of operation of cars and superintendence of transportation due to allowance for increased wages; \$19,000 is added for power expense. The power problem has been a serious one and substantial additions to the power resources have been made in order to afford adequate power facilities. Provision has been made for necessary immediate maintenance expense, increasing that item about \$135,000. In this way it becomes evident that the estimate of operating expenses made in 1918 is grossly inadequate to present needs. A condensed income account based on existing rates would work

out about as follows, allowing rather a liberal increase in revenue:

Operating revenue.....	\$617,800
Operating expenses.....	536,700
Net operating revenue.....	80,600
Taxes.....	42,800
Railroad operating income.....	37,800
Non-operating income.....	5,400
Gross income.....	43,200
* Valuation.....	\$4,425,378.89
Return.....	.97%

*The appraisalment used in the former case is here repeated, there having been no substantial change in the fixed capital account.

This indicates a net deficit of nearly \$100,000 after paying interest. As shown in the other Opinion, the valuation is based upon an approved appraisalment of the tangible property of the company, and the right of the company to a substantial return thereon is unquestioned and unquestionable. Enough to pay interest is immediately essential. It does not seem possible to reduce operating expenses below the foregoing estimate of \$536,694. Indeed, the only items apparently susceptible of substantial reduction are those of maintenance, and these have already been pared as above indicated to an amount sufficient to meet urgent needs, to ensure safe operation, and to meet necessary municipal paving requirements. The only recourse at present is an increase in revenue.

A portion of the interurban line lies in the State of Pennsylvania, and an urban system is operated in the city of Bradford in that State. While it is not the province of this Commission to determine results of operations outside of this State, it has been necessary to make some investigation of Pennsylvania operations in order to reach correct results as to the entire system. Bradford in population is less than Olean and greater than Salamanca. As far as the evidence discloses and figures are obtainable the results are also intermediate between the two. Beyond ascertaining this general fact we shall not attempt to enter into the details of Bradford operations. The elimination of these accounts creates an apparent discrepancy in following

tables between Olean and Salamanca operations, interurban operations, and operation of the entire system. We are able through the appraisement referred to to allocate fixed capital as among the Olean, the Bradford, and the interurban divisions, and we are able to allocate or apportion operating revenues and operating expenses with approximate accuracy. Using 1918 as a basis, and crediting to the city divisions the results of operation of interurban cars within city zones, we reach the following results:

	<i>Interurban</i>	<i>Olean</i>	<i>Salamanca</i>
Number of revenue passengers.....	1,566,918	1,021,905	366,793
Passenger revenue.....	\$243,397	\$74,596	\$28,164

The following table is constructed by assuming a revenue on current rates of \$617,300 as in a preceding table. This makes a liberal allowance for increase over the actual figures to overcome actual deficiencies in 1918 due to causes already indicated.

	<i>Interurban</i>	<i>Olean</i>	<i>Salamanca</i>
Operating revenue.....	\$382,900	\$124,300	\$36,800
Operating expenses.....	332,800	108,300	32,000
Net operating revenues.....	50,100	16,000	4,800
Taxes.....	18,600	13,000	4,600
Non-operating income.....	.....	5,400	.....
Gross income.....	31,500	8,400	300
Deductions from gross income.....	99,000	21,800	7,600
Net corporate income.....	*67,500	*13,400	*7,300
Valuation of property.....	\$3,457,000	400,300	164,500
Ratio of income to valuation.....	.67%	1.78%	.....

* Deficiency

Witnesses for the corporation estimated that an increase of one cent on the urban fares would cause a decrease of about $7\frac{1}{2}$ per cent in the number of passengers carried. We do not consider this flat rate estimate warranted, either by actual results of increases of rates in other communities or by inferences to be drawn by means of deductions from psychological considerations. It is not probable that an increase in the interurban rates will cause any great falling off in travel. Nearly all those using the interurban lines do so either from necessity or because the marked convenience of the service thereby afforded outweighs considerations of all ordinary differences in expense. In construct-

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ing the following tables we have accepted the company's estimate as to decrease in the number of passengers. The table is intended to show the estimated results of different possible rates of fare. The items of valuation, operating expenses, taxes, and deductions from income are constant, and the figures have already been stated so they are not repeated.

<i>Company's request, 4.5¢ interurban and 10¢ city:</i>	<i>Inter- urban</i>	<i>Olson</i>	<i>Sala- manca</i>	<i>Total</i>
Operating revenues.....	\$486,400	\$131,300	\$38,600	\$733,000
Net operating revenues.....	153,800	23,000	6,600	196,300
Non-operating income.....	.....	5,400	.....	5,400
Net corporate income.....	36,000	*6,400	*5,500	19,300
Income available for interest and dividends.	126,700	14,100	1,600	146,500
Ratio of income available for interest and dividends to valuation of property, per cent	3.67	3.52	.98	3.45
<i>4¢ interurban and 10¢ city:</i>				
Operating revenues.....	434,700	131,300	38,600	681,300
Net operating revenues.....	101,900	23,000	6,600	144,600
Non-operating income.....	.....	5,400	.....	5,400
Net corporate income.....	*15,700	*6,400	*5,500	*32,400
Income available for interest and dividends.	75,000	14,100	1,600	94,800
Ratio of income available for interest and dividends to valuation of property, per cent	2.17	3.52	.98	2.24
<i>4.5¢ interurban and 8¢ city:</i>				
Operating revenues.....	486,400	129,000	38,100	723,900
Net operating revenues.....	153,800	20,700	6,100	192,200
Non-operating income.....	.....	5,400	.....	5,400
Net corporate income.....	36,000	*8,700	*6,000	15,200
Income available for interest and dividends.	126,700	11,800	1,100	142,400
Ratio of income available for interest and dividends to valuation of property, per cent	3.67	2.95	.68	3.36
<i>4¢ interurban and 8¢ city:</i>				
Operating revenues.....	434,700	129,000	38,100	677,200
Net operating revenues.....	101,900	20,700	6,100	144,500
Non-operating income.....	.....	5,400	.....	5,400
Net corporate income.....	*15,700	*8,700	*6,000	*36,500
Income available for interest and dividends.	75,000	11,800	1,100	90,700
Ratio of income available for interest and dividends to valuation of property, per cent	2.17	2.95	.68	2.15
<i>4.5¢ interurban and 8¢ city:</i>				
Operating revenues.....	486,400	126,700	37,400	724,800
Net operating revenues.....	153,800	18,400	5,400	188,100
Non-operating income.....	.....	5,400	.....	5,400
Net corporate income.....	36,000	*11,000	*6,700	11,100
Income available for interest and dividends.	126,700	9,500	400	138,300
Ratio of income available for interest and dividends to valuation of property, per cent	3.67	2.38	.24	3.37
<i>4¢ interurban and 8¢ city:</i>				
Operating revenues.....	434,700	126,700	37,400	672,100
Net operating revenues.....	101,900	18,400	5,400	136,400
Non-operating income.....	.....	5,400	.....	5,400
Net corporate income.....	*15,700	*11,000	*6,700	*40,000
Income available for interest and dividends.	75,000	4,600	400	86,000
Ratio of income available for interest and dividends to valuation of property, per cent	2.17	2.38	.24	2.06

*Deficiency.

We are very confident that to establish rates in Olean or Salamanca at 8 cents instead of 7 cents would create a falling off in the number of passengers more than the $7\frac{1}{2}$ per cent estimated, that to permit 9 cents would still more greatly reduce traffic, and to permit 10 cents would so operate as probably to cause an actual decrease in revenue. In addition to this consideration, the Commission should not permit a rate to be imposed so high as to cause travel to decrease unless it appears to be absolutely necessary in order to keep the system running. Street car travel should be kept within the means of all classes of people if it is possible so to do. The lines operate in Olean and in Salamanca over substantially level routes. The distance traveled by the average passenger is not great, and the point is readily reached where he will, except in exceptionally bad weather, walk rather than ride. On the other hand, the interurban lines are already bearing the greater part of the burden, and interurban passengers should not be subjected to the entire necessary increase in rates merely because more generally they have to ride. None of the estimates based on a four cent rate interurban promises an adequate revenue when combined with higher city rates. We feel, therefore, that we must allow a maximum interurban rate of four and one-half cents, and a rate in each of the cities of eight cents, the interurban rate also to be eight cents within each of the cities. It is believed that this will work better results than the higher rate demanded so far as the corporation is concerned and it certainly will work less hardship to city passengers. The return afforded must be in any event slight, but the situation prevents for the present any practicable rates affording an adequate return.

It is not yet entirely beyond hope that costs may shortly be reduced. Therefore the rate should be fixed for one year, and thereafter until otherwise ordered by the Commission. It is, however, recommended that the corporation make a close study of possible economies especially in city

operation along lines that have of late been suggested, in the hope that new methods of equipment or operation or both may afford a better solution than higher rates, and especially with a view to determining whether something may not be done which in connection with decreases in rates may re-attract to the urban cars short distance riders and so replenish the revenue by increasing the volume of traffic. The rates fixed are maximum rates, and their establishment will not interfere either with the studies recommended or with carrying results of such studies into effect.

All concur.

Petition of UNITED STATES LENS COMPANY under chapter 667, laws of 1915, for a certificate of public convenience and necessity for the operation of a stage route by auto buses in the city of Geneva alone. [Case No. 7098.]

A corporation organized under the Business Corporations Law may not operate a public conveyance of passengers for hire, and therefore may not receive a certificate of public convenience and necessity for that purpose.

Decided December 16, 1919.

Appearances:

J. B. Sanford, United States Lens Company, Geneva, for the petitioner.

Lansing G. Hoskins, Geneva, attorney for Geneva, Seneca Falls and Auburn Railroad Company; and *R. R. Quay*, President; *Thomas H. Werry, jr.*, Auditor; and *W. A. Shirley*, Superintendent, of Geneva, Seneca Falls and Auburn Railroad Company.

LEVINE, Commissioner:

The United States Lens Company conducts a factory in the city of Geneva about one-half mile from the nearest point on the lines of the Geneva, Seneca Falls and Auburn railroad, which operates an urban system in Geneva. The Lens company having procured the consent of the municipal authorities, applies to the Commission for a certificate of public convenience and necessity for the operation of a stage route over certain streets designated in the consent and in the petition. The object of the undertaking is to provide facilities whereby employees of the company may readily reach the factory and return to their homes. These employees are for the most part women and live in the northern part of the city. It is proposed to make trips morning, noon, and evening, according to the working hours,

and not to operate steadily throughout the day. It is also proposed to sell twenty-six tickets for \$1. The schedule and route of the buses, together with this peculiar rate of fare, would practically restrict the travel to employees of the petitioner. While the route in part parallels lines of the street railroad company, the distance of the street railroad from the factory and the relative positions of the factory and the homes of the employees are factors which would prevent any considerable competition between the bus line and the street railroad company. The convenience afforded the employees, together with their inability to make use of existing street car facilities, would lead the Commission to grant the certificate were it not for a serious legal objection.

The Lens company is a business corporation. The Business Corporations Law, section 2, permits incorporation thereunder "for any lawful business purpose or purposes other than a moneyed corporation, or a corporation provided for by the banking, the insurance, the railroad, and the transportation corporations laws . . ." Article 4 of the Transportation Corporations Law deals with stage coach corporations, and section 20 of that law provides the method of their incorporation. Such incorporation is for the purpose of maintaining or operating any stage or omnibus route for public use in the conveyance of persons and property elsewhere than in the city of New York. Section 23 preserves the right of corporations already incorporated under any law and operating stage routes where such routes had been continuously operated for five years prior to the passage of the act in cities of the first class. It was obviously the purpose of the legislature to require an incorporation under the banking, insurance, railroad, and transportation corporations laws for all purposes provided in those laws and to restrict business corporations to purposes not so provided. The Attorney General ruled in 1891 that a corporation organized under what is now the Business Corporations

Law might operate a stage route in the city of New York, for the reason that the city of New York is expressly excluded by section 20 of the Transportation Corporations Law from the operation of that section providing for stage coach corporations. In *People v. Public Service Commission*, 226 N. Y. 527, the Court of Appeals held that a corporation organized under the Business Corporations Law could not transform itself into an electrical corporation by amendment of its certificate, the purposes of the two corporations being entirely different. In *Public Service Commission v. J. & J. Rogers Company*, 184 Appellate Division 705, it was held that a manufacturing corporation can not engage in the business of doing electric lighting for hire. We are, therefore, constrained to hold that the applicant can not be authorized to conduct a public stage line or omnibus route in the city of Geneva, and that its application for a certificate of public convenience and necessity must therefore be denied.

It may well be that as an incident of its business, a business corporation may provide means of conveying its employees and no others to and from its plant. This situation may be distinguished from *Public Service Commission v. Fox*, 96 Misc. 283. In that case the travel was confined to employees of a certain corporation, but the bus was not operated by the corporation but by a third person under the pretext of a coöperative society of employees. Whether such operation restricted to employees is legal or illegal is not for the Commission to decide, in this case at least. We are constrained to hold that a business corporation may not conduct a public conveyance for hire, and therefore may not receive a certificate of public convenience and necessity for that purpose. If it may operate a conveyance for its own employees as incidental to its business, such transportation is private in character and does not require for its validity any certificate. The petition must be denied.

All concur.

In the Matter of the Complaint of H. C. DRAKE AS PRESIDENT OF THE VILLAGE OF FREDONIA *against* DUNKIRK AND FREDONIA TELEPHONE COMPANY as to increased rates, and as to service. [Case No. 6522.]

The proper function of the Commission in acting upon a service complaint is to see that it is satisfied by the service being made efficient or adequate as may be found necessary, and where the defects in the service are susceptible of correction, such correction is the proper remedy instead of an allowance in the rate to offset the defective service.

Where service is found to be inherently bad and beyond the reach of corrective measures, the inadequate or inefficient service may properly be given consideration as bearing upon the rate.

Decided December 18, 1919.

Appearances:

William S. Stearns, attorney for the Village of Fredonia.

John W. Hunn, President of the Village of Fredonia.

George H. Frost and *Fred W. Plato*, 920 White Building, Buffalo, for respondent.

HILL, Chairman:

This complaint was made July 13, 1918, against a new rate tariff filed by respondent with the Public Service Commission, proposed to be put into effect on August 1, 1918, increasing the individual line business rate from \$48 to \$54 per year; the two-party line business rate from \$39 to \$45 per year; the individual line residence rate from \$30 to \$33 per year; the two-party line residence rate from \$24 to \$27 per year; and the four-party line residence rate from \$18 to \$21 per year, with other minor increases and with discounts for prompt payment. The complaint alleges that the rates are excessive, and also that they are discriminatory, but no stress has been laid upon the charge of discrimination, nor are we pointed to any particular feature of the tariff which is claimed to be discriminatory.

The complaint also alleges that the service given by the company is inadequate and inefficient.

SERVICE

In this case a large number of witnesses testified to defective and inefficient service. These defects covered various features of the service, including induction, failure of the switchboard operators to give prompt connections, both exchange and toll, and especially great delay and annoyance in furnishing connections which went through the Dunkirk exchanges of other companies. These Dunkirk connections were made between the customers of the respondent herein and those of other telephone companies operating in Dunkirk through a reciprocal arrangement between the companies, by which communication was furnished between the customers of each company and the customers of the other companies. It was satisfactorily established that this service was inadequate and inefficient, and so continued up to a very recent date.

The Commission has had the service carefully inspected since the giving of the testimony referred to. This inspection covered several weeks, with the inspector constantly on the ground. The written report of the inspector, in the files of the Commission, under date of December 3, 1919, concludes with this statement:

At the present time I consider the service fairly good and that if it is kept up to its present standard there will be little cause for subscribers to complain. Much depends on the cooperation of the two companies to give satisfactory service between Dunkirk and Fredonia, and both give pledges to do their best. A re-canvass of public opinion was made on my last visit and former complainants advised me that their service was satisfactory.

Ordinarily, complaints of inefficient or inadequate service can not be given consideration in the making of a rate. The proper function of the Commission in acting upon a service complaint is to see that it is satisfied by the service being made efficient or adequate as may be found necessary.

Where service is found to be inherently bad and beyond the reach of corrective measures, the inadequate or inefficient service may properly be given consideration as bearing upon the rate, otherwise a first-class rate might be exacted for a second- or third-class service. But where the defects in the service are susceptible of correction, such correction is the proper remedy instead of an allowance in the rate to offset the defective service. It is believed that the defects in service which were justly complained of in this case have been substantially overcome. It will be the duty, however, of the Commission to follow up the operations of the company to the end that the service shall be satisfactory in the future.

METHOD OF OPERATION

The Dunkirk and Fredonia Telephone Company occupies the village of Fredonia, with a population of about 5500, which lies adjacent to the city of Dunkirk, with a population of about 21,000, the business centers of the two municipalities being about three miles apart and the vacant space between the two being inconsiderable. There is much community of interest between the respective populations. The company also operates several rural lines running into the country. The central office is in Fredonia. The company has about one thousand exchange subscribers, all of whom are in Fredonia or its immediate suburbs. The New York Telephone Company owns and operates the neighboring exchange in Dunkirk, having recently acquired and amalgamated an independent company which formerly competed with it there. The number of subscribers of the New York company in the Dunkirk exchange as shown by the directory of May, 1918, was about 789, and the independent line in Dunkirk had about 1270 subscribers. By a reciprocal arrangement between the respective companies, the Dunkirk subscribers of both Dunkirk companies were included within the free exchange area of the Fredonia company, and *vice versa*, the central offices being connected by trunk lines, and

this arrangement now continues after the amalgamation of the properties of the two Dunkirk companies.

The exchange rates of both the Dunkirk and Fredonia companies could be adjusted to a lower basis than is called for by the present system of operation, if instead of treating the zones occupied by each as a common zone served by both, the free exchange areas were separated and a toll charge between the two inaugurated. This would seem a more just arrangement than that in use, for the reason that the cost of interzone service would thus be wholly borne by those subscribers making use of it in exact proportion to the use made by each, while the subscriber who used interzone service little or none would be required to contribute little or nothing, depending on the extent of use. Theoretically this change should be made, but the counsel for both the company and the Village of Fredonia state unreservedly that the change would not be satisfactory to the Fredonia subscribers. In this connection it appears that in 1914 the companies filed with the Commission schedules initiating a five cent toll rate between these two points, and that four complaints were at once filed against them [case No. 4306]. Before a hearing was had the schedules were all withdrawn by agreement between the companies and the complainants, and it is stated that the sentiment in the communities then was and continues to be very generally against such a toll charge. Under the circumstances it does not seem wise to force such an arrangement on these communities, notwithstanding the view of the Commission that it would be the fairer of the two methods of intercommunication. If in the future the question should be again raised, the disposition of the present case will be no bar to its further consideration.

RATES

It remains to consider whether or not the rates complained of and which are now in effect will yield the company more than a reasonable return upon the value of its property devoted to public use with reasonable allowances

for contingencies and additions to surplus within the intent and meaning of the statute.

During the progress of the complaint an examination of the company's books was made by the Commission, and a report thereon under date of September 24, 1918, was made by the Commission's division of capitalization and transmitted to the respective counsel for their information. Briefly, this report assumed a property valuation of \$70,000 as a proper sum upon which to compute the return, and showed that with operating revenues of \$25,000, which the new rates were assumed to make available, and operating expenses and depreciation of \$18,600, with taxes of \$800, there would be available for surplus and contingencies, \$5600, equal to 8 per cent on the \$70,000 assumed as above stated.

We now have available, however, an actual income account from the books of the company for eleven months beginning January 1, 1919, during all of which time the disputed rates were in effect.

This statement follows:

DUNKIRK AND FREDONIA TELEPHONE COMPANY
*Income Account for Eleven Months, January 1, 1919, to November 30, 1919,
Both Dates Inclusive.*

<i>Operating Revenue and Income Accounts:</i>		
Exchange service revenues.....	\$20,220.57	
Toll service revenues.....	1,580.65	
		\$21,801.22
Taxes assignable to operations.....		1,052.77
		\$20,748.45
Interest deductions		533.04
		\$20,215.41
<i>Operating Expense Accounts:</i>		
Repairs of wire plant.....	\$2,809.54	
Repairs of equipment.....	846.21	
Station removals and changes.....	965.00	
Depreciation of plant and equipment.....	4,400.00	
Operators' wages	5,171.20	
Central office supplies and expenses.....	1,211.67	
Commercial expenses	1,483.54	
General administration	2,326.54	
Insurance	889.01	
		\$19,052.71
Net corporate income.....		\$1,162.70

It thus appears that the actual operations have been much less favorable than the estimate above referred to. I am

inclined to think that the item for depreciation of plant and equipment, \$4400 for the eleven months, may be fairly criticised, and if we reduce this item to \$4000 for the year, we get a net corporate income for the year slightly in excess of \$2000. There does not seem much room for argument and there was no substantial contention about the value of the company's property in public use. If we adopt the book figure of the company, \$75,675, and deduct all of the depreciation reserve set up by the company, amounting to \$20,757, we find as a rate base \$54,918.

Whether we take 6, 7, or 8 per cent as a rate of return, it is apparent that the net income of the company is below the required amount. It is also easily ascertained from the financial history of the company as made apparent from its books that there is no accumulation of excessive earnings in the past which can be taken into account in considering the return to which it is now entitled.

Under the circumstances, we can find no ground upon which to determine that the rates complained of are unjust or unreasonable, and the complaint must therefore be dismissed.

All concur.

Petition of HASTINGS RAILWAY COMPANY, INC., street surface railroad, under section 9 of the Railroad Law for a certificate that it has lawfully published its certificate of incorporation, and that public convenience and a necessity require the construction of its railroad; and under section 53, Public Service Commissions Law, for permission to begin construction of its railroad and exercise franchise from the Village of Hastings-on-Hudson. [Case No. 7194]

A certificate of public convenience and a necessity should be granted a proposed street surface railroad company where it appears that a substantial portion of a municipality will be accommodated by its contemplated line, although a larger number of the citizens of the municipality would be accommodated if the route were longer.

This is true even where another and affiliated street surface railroad company formerly operated the longer route, which it has since abandoned.

A franchise permitting the storage of cars in a street, narrow in width and largely traveled, should not be approved, and cars should be permitted to stand in such street at the end of the line, only a sufficient length of time to await their return trips in the due course of prompt operation.

Decided December 23, 1919.

Appearances:

Alfred T. Davison for petitioner.

Thomas J. Goodwin, President, and *Frederick T. Burns*, attorney, for the Village of Hastings-on-Hudson.

Harry J. Prie, President, and *A. C. Glazier* for Union-town Taxpayers and Citizens Association, in opposition.

William J. Eastabrooks, personally in opposition.

J. S. Zinsser for Zinsser & Company and August Zinsser Realty Company, in opposition.

A large number of individuals also appeared personally.

KELLOGG, Commissioner:

For about nineteen years prior to April last, The Yonkers Railroad Company operated a street surface railroad in the

village of Hastings-on-Hudson. This was an extension of its Warburton Avenue line in the city of Yonkers, which continuing in the adjacent municipality of Hastings-on-Hudson ran northerly on Warburton avenue to Main street in that village, thence turning easterly ran to Farragut Road, and thence over Farragut Road in a general southeasterly direction to the intersection of Green street. The entire distance occupied in the streets of the village of Hastings-on-Hudson was 2.165 miles.

In December, 1918, The Yonkers Railroad Company made application to this Commission for permission to abandon certain portions of its road, including the foregoing described part in the village of Hastings-on-Hudson. The opinion of the Commission was written by the Chairman, and is based upon the theory that as it appeared that operating expenses largely exceeded the entire revenues of the line, public convenience did not require its continued operation in Hastings-on-Hudson.

Under conditions as they then existed, a single five cent fare was charged from the terminus of the line in the village of Hastings-on-Hudson to the subway in New York city, a distance of about nine miles. Since that time changes have been made permitting the collection of two five cent fares from passengers from the northerly bounds of the city of Yonkers to the subway.

In case No. 6925, The Yonkers Railroad Company in July, 1919, filed with this Commission a petition to again extend its railroad over that portion of the old route from the boundary line between these municipalities and the intersection of Main street and Warburton avenue in Hastings-on-Hudson. This privilege was applied for under a new franchise issued by the village authorities which placed certain restrictions on the powers of this Commission, and the application was denied.

The project under consideration in this case is a new street surface railroad corporation, distinct in its corporate

entity but affiliated in ownership with The Yonkers Railroad Company, to operate a portion of the Hastings-on-Hudson line consisting of so much of the same as was on Warburton avenue, and 546 feet of the portion on Main street running easterly for that distance from Warburton avenue.

The petitioner has filed its certificate of incorporation for operation over this route. The consent of the local authorities is in perpetuity and contains no restrictions except the statutory reference to the provisions of the Railroad Law, and a provision limiting the use of that portion of the line on Main street to the storage of cars only.

The petitioner now applies for the issuance by this Commission of a certificate of public convenience and a necessity under section 9 of the Railroad Law, and also asks that permission and approval be given to the exercise of the franchise or right given by the consent of the village authorities, and for such other orders and determination in the premises as will permit the operation of the proposed railroad line. The latter part of the application apparently comes under section 53 of the Public Service Commissions Law.

It will be noted that the practical effect of this proposed procedure, and the operation of this railroad if permitted, would be the resumption of street railroad traffic as far northerly as the corner of Warburton avenue and Main street, with the added right to the railroad company of moving its cars around the corner in Main street, and leaving them there at any point on said street not more than 546 feet distant from the corner of Warburton avenue.

One result of this proposed change, which gives rise to much opposition, would be the continued deprivation of the portion of the village tributary to that part of the line which was formerly operated on Farragut Road, of trolley facilities permitting their direct transportation to Yonkers

and the city of New York, a privilege they enjoyed for about nineteen years prior to last April.

The rails, poles, and wires of the old line have been left in position on Warburton avenue, and on Main street to the extent of the 546 feet in question, but have been removed from the remainder of Main street and Farragut Road, a distance of about four-fifths of a mile. All that is necessary to commence operation, therefore, to the limited extent proposed, is to obtain the necessary legal consents to commence the operation of the cars, which will undoubtedly be run in connection with the connecting line of the Yonkers railroad.

The sections of the village of Hastings-on-Hudson affected by this deprivation of trolley service which they formerly enjoyed are known at Hastings Heights and Uniontown, and from them, especially the latter, a very determined opposition has developed to the granting of any franchise which does not include them within its scope. That is to say, if the railroad is not of sufficient length to reach these sections, they oppose the granting of franchises or other rights permitting the operation of any portion of the railroad whatsoever within the village limits.

It is not to be wondered at that people who have located, purchased property, and perhaps erected homes in the expectation of a continuance of a long established transportation service, should be indignant and feel outraged at the cessation of that service. And it is to be hoped that their very natural desire and demand for transportation may, at a not far distant date, when normal conditions are resumed, be complied with.

But the only present question is whether this proposed limited strip of railroad serves the public convenience and necessity so that the certificate of this Commission should issue to that effect, and its permission to exercise franchises granted by local authorities be given.

The village in question has a population of about 5500 people, and a test count on the formerly operated line showed that about 3800 passengers were carried in this village, or about 1900 each way, per day. This shows a very substantial demand for this service, and a very large proportion of these patrons will be accommodated by the limited and shorter line, the operation of which is now proposed to be restored.

It is quite apparent that a line of railroad which will serve public convenience so far as it is operated, ought not to be denied the certificates necessary to its legal operation for the reason that it does not extend a sufficient distance to accommodate other people who might be benefited by a more extended construction. The fact that the shorter line is necessary, and serves a public convenience, certainly does not preclude the issuance of a certificate to that effect, even though the longer line would be still more beneficial.

The construction and operation of a public utility which is good as far as it goes should not be prevented, and its probable patrons be denied its service, because its promoters do not propose to extend such service to other people who are desirous of having similar accommodation.

The Opinion of this Commission written in case No. 6684, previously referred to, was read upon the hearing by the opposition, and it was urged as a holding to the effect that public convenience and a necessity did not require the construction of any line in the village of Hastings-on-Hudson because it could not prove financially profitable. That opinion undoubtedly goes far along this line, but it is based upon figures and facts as they then existed, when only a single five cent fare was permitted from the end of the line at Uniontown to the subway in the city of New York. If this proposed railroad is operated, three fares will be collected over this distance, one in the village of Hastings-on-Hudson and two in the city of Yonkers. This will very materially change the situation as to probable receipts from

that considered in that case; and as in all litigation, the opinion must be construed in connection with the conditions then existing and under consideration.

It is also urged that a franchise in perpetuity ought not to be approved. The terms of the franchise is a matter largely within the discretion of the municipal authorities, and unless there is an abuse of such discretion the Commission should not interfere. Such abuse does not appear here. It is also objected that the franchise excludes the use of underground conduits in lieu of overhead trolley wires. This is not an objection which should prevent the granting of the franchise, as throughout this entire district overhead trolley wires are permitted, and necessarily so, for reasons of economy.

Another question arises here from the fact that although the certificate of incorporation permits this proposed railroad to be operated over 546 feet of Main street, the franchise granted by the board of trustees with regard to that portion of the highways is limited to car storage purposes. This does seem to be a very peculiar and unusual restriction. This feature developed violent protest from many quarters, the fire chief of the village himself appearing in opposition, claiming that the storage of cars on this street, only thirty-four feet in width from curb to curb, would be dangerous in case of fire alarms.

The company on the hearing disclaimed any intention of using it for storage purposes, except so far as it may be necessary to run cars to and from the end of the line, and to wait there for a short time before their return trips. Some times in peak-hour rush, when many men are employed by the Hastings-on-Hudson industries, as many as seven or eight cars are necessarily in use at the same time to transport workmen to and from Yonkers and points farther south, at the time of the opening and closing of the works, and these cars have to be run to the end of the line and remain until they return in the due course of operation.

The route described in the application of The Yonkers Railroad Company, which was denied in case No. 6925, only ran from Warburton avenue to the corner of Main street, and the president of the village stated at the hearing that the extension of the franchise around the corner of Main street was desirable in order that the cars may turn the corner and there await their return trips off of Warburton avenue.

This would seem to be a most commendable plan because, if the line ended on Warburton avenue, and the cars stopped there and waited for the return trip, the condition would be a very dangerous one indeed. The street is a narrow one, and is part of the main highway from New York city northerly. Many thousands of automobiles traverse it every day, and it is not a proper or safe place for the stoppage of a car as a terminus of a line, for either the alighting or taking on board of any large number of passengers. The operation of the cars around the corner, in Main street, is a much better plan.

Of course cars should not be permitted to remain there for any unnecessary or improper length of time, and it would not seem that the railroad would wish to leave its cars over night, as it is suggested that it might under the provisions of the franchise, as undoubtedly damage to the cars would ensue, and the crews after being transported away at night would have to be sent in the morning to commence their operation, and an unnecessary expense would thereby be incurred. If the railroad company, contrary to what its representative stated to be its desire in the matter, uses this part of the line for the storage of cars to an unnecessary extent, or to a degree to interfere in the slightest with the proper operation of the fire department, such conduct could be, and undoubtedly would be, stopped under the regulatory powers of this Commission.

But further, a franchise which if fully exercised would be dangerous to public security, and which the railroad

says it does not propose to use, should not be approved unconditionally. And this permission to operate under this franchise should be given by this Commission only with proper conditions eliminating all danger, and prohibiting practices which it is claimed are not contemplated, but which under the provisions of the franchise, if not restricted, could be legally exercised.

This franchise assuming to permit the storage of cars in Main street should be approved only upon the condition that no cars should be left upon said street after the cessation of the operation of the road at night, and before commencement of the movement of cars in the morning. And furthermore, cars should not be left upon said street except for such time as may be necessary after the completion of their northerly run, until they can commence in prompt course of operation their return trips to the south.

It is to be regretted that the railroad company does not see fit to reinstate the entire line operated for so many years, as it is quite probable that with the present fares the burden of operation of the entire former line could be successfully borne. But if the new company does not see fit to undertake the operation of the more extended line, it should not be prevented from operating for the shorter distance. The operation may prove so profitable and pleasant that the company may shortly see its way clear to resume, with reasonable expectation of added gain, the operation in effect for many years, by the extension of the franchise now applied for.

The hearing on this matter was held at the Public School in the village of Hastings-on-Hudson, on the evening of December 17, 1919. Several hundred people were in attendance, and the feeling both for and against the application was very intense. The matter was most thoroughly and intelligently discussed on all sides, and notwithstanding the earnestness of the parties in interest and their very proper anxiety, all present conducted themselves with much

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dignity, discussed the various questions with much calmness, refrained except in a few minor instances from personalities, and very decidedly assisted the sitting Commissioner in arriving at the conclusions in this case, for which they are entitled to the thanks and appreciation of the entire Commission.

It is to be regretted that the needs of this entire community can not be served by proper transportation facilities, but it is hoped that a beginning will be made in the exercise of the franchise here applied for, and that such franchise at a not distant date will be extended to accommodate the entire community.

The certificate should be issued and an order granted, the latter subject to the conditions as to storage of cars on Main street hereinbefore indicated.

Chairman Hill and Commissioners Barhite and Fennell concur; Commissioner Irvine not present.

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14. Increase in fares authorized. *Complaint of Louis P. Fuhrmann, etc., v. International Railway Company.* 420

15. A public service corporation has the right to file schedules giving notice of proposed change in rates without action on the part of the Commission, unless the rates affected have theretofore been fixed and are effective under an order of the Commission, and such filing is not evidence that the Commission has approved the rates named in the schedule. *Complaint of Village of Goshen v. Wallkill Transit Company.* 439

16. Where a franchise granted by a municipality to a public service corporation contains an agreement naming the rate to be charged for services rendered by the corporation, but reserves the right to the Legislature to regulate or reduce such rate, the Commission has jurisdiction to increase or decrease the rate mentioned in the schedule. *Id.*

17. Increase in fares approved. *Complaint of Harry A. Wilkinson, etc., v. New York State Railways.* 476

18. Proposed increase in fares held not unreasonable. *Complaint of Residents Chautauqua County v. Chautauqua Traction Company et al.* 484

19. Increase in fares approved. *Petition of Western New York and Pennsylvania Traction Company.* 517

20. The practical results of increased fares should be kept in view: they should not be higher than passengers are able or willing to pay, but high enough to permit operations to continue. *Id.*

Federal Control of Railroads.

1. An examination of the Federal Control Act discloses that whether or not the Congress has the power to dispossess state authorities of the police powers vested in them, it has

expressly refrained from using such power. *Complaint of Village of Granville v. The Delaware and Hudson Company et al.* 41

2. On a petition to discontinue the maintenance of a ticket agent at a passenger station, it was shown that the agent performed other duties at the station, and that his net income from the three positions, assuming present conditions to continue during the year, would be something over \$5200: held that the remedy was to reduce the compensation rather than deprive the public of a service to which it had long been accustomed and to which it is reasonably entitled. *Petition of United States Railroad Administration, New York Central Railroad.* 45

3. Rates established by United States Railroad Administration approved. *Complaint of Residents Chautauqua County v. Chautauqua Traction Company et al.* 484]

Federal Income Tax.

The Federal Income Tax will not be allowed as a deduction from income in determining the return on investment of a public service corporation. *Complaint of Louis P. Fuhrmann, etc., v. Iroquois Natural Gas Company.* 118

Forest Preserve.

On an application for rescission of an order requiring the use of oil burning locomotives within the Forest Preserve during certain months of the year, held that the Commission is not justified in relaxing precautions because of expense entailed in observing them. *Petition of United States Railroad Administration, New York Central Railroad.* 61

Franchise.

1. The Commission will not grant a certificate of public convenience and necessity with respect to the exercise of a permit granted by local authorities over the public streets of a village which is not named in the certificate of incorporation of the lighting company which is the grantee of such permit. *Petition of Lawrence Park Light, Heat and Power Company.* 19

2. A municipality having granted a franchise for the construction and maintenance of an electric plant in its public highways, and the Commission having given its consent to the construction of such a plant and its approval to the exercise of the franchise, and the corporation having actually constructed its plant, the Commission is without authority to revoke the franchise or its consent and approval because of interruptions in service. *Complaint of Herbert C. Persbacher et al. v. Calliocon Independent Electric Company, Inc.* 90

3. If an electrical corporation is unwilling or unable to render adequate service, the existence of its plant and its franchise is not in itself a sufficient reason for denying the approval of the exercise of a franchise granted to another company. *Id.*

4. Where an electrical corporation is already lawfully operating, approval will not be given to the construction of an independent plant and the exercise of a franchise to another company in a community so small that the existing company has operated at great loss, and the evidence tends to show that the new company, if occupying the field alone, would be unprofitable. *Id.*

5. The authority of a lighting corporation organized under the Transportation Corporations Law to occupy public streets and highways is drawn from the State and not from the local authorities: the latter only consent to the exercise of the power given by the State because the Legislature has made the local consent a condition to the exercise of the privilege or franchise granted by it. *Complaint of Patchogue Electric Light Company v. North Shore Electric Light and Power Company.* 242

6. A rate limitation in the franchise of a company which was afterward merged by a company possessing a franchise free from limitations, held that the limitation which

might be charged by the limiting franchise did not apply to gas furnished in mains laid in streets included within the unrestricted franchise and now operated by the common owner of both franchisees. *Complaint of George S. Buck, etc., et al. v. William J. Judge et al.* 318

7. An electrical corporation unable or unwilling to furnish adequate service is not entitled to the protection of its monopoly in the field served, but a certificate of authority will not be granted to a municipality to establish an electric plant to compete with such a corporation where the general information in possession of the Commission indicates that the maintenance and operation of the plant would necessarily be at a great loss. *Petition of Village of Schenectady.* 389

8. An electrical corporation operated with one generating plant in two villages, both small; one village sought a certificate of authority to install a municipal plant for commercial purposes; this would inevitably lead to an entire abandonment of the service in the other village: held that this is a circumstance to be considered by this Commission, representing the entire public, in passing upon the application of the first village. *Id.*

9. Transfer of franchise authorized, and construction, etc., approved. *Joint Petition of Kate E. Smith, etc., and Solville Electric Light & Power Company.* 436

10. A franchise permitting the storage of cars in a street narrow in width and largely traveled should not be approved, and cars should be permitted to stand in such a street only a sufficient length of time to await their return trips in due course of prompt operation. *Petition of Hastings Railway Company, Inc.* 536

Generation of Electricity.

A generation of practically two kw.h. for every kw.h. actually used and paid for indicates an uneconomic generation of power; such a company owes a duty to the public to purchase power if possible instead of manufacturing. *Complaint of Summer Residents at East Hampton v. East Hampton Electric Light Company.* 356

Going Value.

1. Discussion of claim for going value, where company has not been successful and after period of seventeen years shows accrued deficit in excess of investment. *Complaint of George W. Whitehead, etc., v. Niagara Falls Gas and Electric Light Company.* 233

2. Where a street surface railroad company is operated by virtue of various consents granted by local authorities pursuant to powers given them by the Legislature, enters into a written agreement with the municipal authorities which is afterward ratified by the Legislature by the terms of which a fare to be charged is fixed, subject to the provision that nothing in the contract shall be construed to prescribe the Legislature regulating the fare, it was held that operation pursuant to the terms of the agreement precludes any consideration of what is known as going value in a proceeding before the Commission wherein the power of regulation so reserved to the Legislature is invoked. *Complaint of Louis P. Fuhrmann, etc., v. International Railway Company.* 420

Grade Crossings, Railroads.

1. Where a city is providing for an industrial development, proposed highways across tracks used for industrial switching may be at grade if the train switching movements are flagged over the crossings. *Petition of City of Syracuse, etc.* 86

2. The rights of the parties in respect to an old grade crossing of a railroad, now closed, should be determined in an appropriate legal proceeding before the railroad, the town, and the State are subjected to the expense of constructing an overgrade crossing. *Petition of Town Board and Superintendent of Highways of the Town of Harrietstown.* 104

3. Audible-visible signals should be installed at all railroad crossings at grade where the view is obscured and the approach is dangerous. *Matter of Protection of Grade Crossings, New York Central and Delaware and Hudson Railroads.* 384

Highway Crossings.

Where in the construction of a railroad the location of a highway and highway bridge are changed, and it is not shown that the right of way boundary lines of the railroad include or exclude the bridge, the question of responsibility for maintenance, depending on the determination of the legal question of boundary lines, is one for the Supreme Court. *Complaint of Residents of Phillipsport v. New York, Ontario and Western Railway Company.* 57

Interchange Facilities, Railroads.

The Commission does not have jurisdiction to require two railroads to connect their lines by an interchange track when the purpose of the track is to give one carrier the use of the terminal facilities of another carrier. *Complaint of Batavia Chamber of Commerce v. United States Railroad Administration et al.* 397

Locomotives in Forest Preserve.

1. On an application for rescission of an order requiring the use of oil burning locomotives within the Forest Preserve during certain months of the year, held that unless the Commission is satisfied that present devices and methods of operation afford practical security against the setting of fires by passing trains, it can not be justified in relaxing precautions because of expense entailed in observing them. *Petition of United States Railroad Administration, New York Central Railroad.* 61

2. Notwithstanding improvements and devices to prevent the emission of cinders from smokestacks of locomotives and the dropping of embers from ash-pans, the dangers arising from possible defects in construction and maintenance and from careless operation make it inadvisable at this time to rescind or modify the order. *Id.*

Maximum Price.

A maximum price to be charged for gas manufactured and sold in a municipality is not controlling for gas manufactured in the municipality and transmitted by pipes and sold in neighboring municipalities. *Petition of Municipal Gas Company of the City of Albany.* 11

Minimum Charge.

A minimum charge monthly for readiness to serve authorized. *Complaint of Trustees Village of Sag Harbor v. Long Island Gas Corporation.* 277

Partners.

Corporations can not become partners. *Petition of Wayland-Steuken Power Company Inc.* 275.

Physical Condition, Electric Railroads.

1. The power of local municipal authorities to require a street surface railroad to pave between its tracks and two feet each side thereof does not include the power to order replacement of the tracks. *Complaint of City of Oswego, etc., v. Empire State Railroad Corporation.* 393

2. The power to order the replacement of the track is vested in the Commission, and is properly exercised in a case where the track has become insecure and unsafe for ordinary operations. *Id.*

Police Powers of the State.

1. The regulation of passenger and freight facilities at stations does not in any substantial way affect the interstate features of traffic and is well within the police powers of the several States. *Complaint of Village of Granville v. The Delaware and Hudson Company et al.* 41

2. Police power of the State to fix rates recognized by the Court of Appeals and the Supreme Court of the United States. *Complaint of Trustees Village of Sag Harbor v. Long Island Gas Corporation.* 277

3. The police power of the State, in respect to contractual or franchise rights, is controlling outside the municipality giving the franchise. *Complaint of Harry A. Wilkinson, etc., v. New York State Railways.* 476

Powers of the Commission.

1. Where in the construction of a railroad the location of a highway and highway bridge are changed, and it is not shown that the right of way boundary lines of the railroad include or exclude the bridge, the question of responsibility for maintenance, depending on the determination of the legal question of boundary lines, is one for the Supreme Court. *Complaint of Residents of Phillipsport v. New York, Ontario and Western Railway Company.* 57

2. A municipality having granted a franchise for the construction and maintenance of an electric plant in its public highways, and the Commission having given its consent to the construction of such a plant and its approval to the exercise of the franchise, and the corporation having actually constructed its plant, the Commission is without authority to revoke the franchise or its consent and approval because of interruptions in service. *Complaint of Herbert C. Persbacher et al. v. Callicoon Independent Electric Company, Inc.* 90

3. An order of the Commission directing a betterment of service by a natural gas company, stayed by the Supreme Court, will be held in abeyance until the Court has made its decision. *Complaint of Residents of Mumford v. Tri-County Natural Gas Company.* 175

4. A condition in a consent to the construction and operation of an interurban trolley railroad along certain highways in a city placed certain limits on the rates of fare which the railroad company should be permitted to charge between points inside of the city and points in other municipalities reached by the railroad: held that assuming such limitations to be valid and within the power of the local authorities to impose, the rates therein provided are nevertheless subject to regulation by the Commission. *Petition of Schenectady Railway Company.* 182

5. Neither this Commission nor the Interstate Commerce Commission can require a Pennsylvania corporation producing natural gas in Pennsylvania to transport it and deliver it to a distributing company in the State of New York: such transportation and sale is a matter of private contract between the Pennsylvania producing corporation and the New York distributing corporation. *Complaint of George W. Lane, etc., v. Crystal City Gas Company.* 210

6. The Commission not only has the power but it is its duty to protect a lighting company against unlawful invasion of its territory by a competing company. *Complaint of Patchogue Electric Light Company v. North Shore Electric Light and Power Company.* 242

7. A gas company can not be required by the Commission to construct and maintain a coke plant under the theory that the byproduct gas from such plant would provide a cheaper supply of gas. *Complaint of George S. Buck, etc., et al. v. William J. Judge et al.* 318

8. The power to order the replacement of the track of a street surface railroad is vested in the Commission, and is properly exercised in a case where the track has become insecure and unsafe for ordinary operations. *Complaint of City of Oswego, etc., v. Empire State Railroad Corporation.* 393

9. The Commission does not have jurisdiction to require two railroads to connect their lines by an interchange track when the purpose of the track is to give one carrier the use of the terminal facilities of another carrier. *Complaint of Batavia Chamber of Commerce v. United States Railroad Administration et al.* 397

10. Where a street surface railroad company is operated by virtue of various consents granted by local authorities pursuant to powers given them by the Legislature, enters into

a written agreement with the municipal authorities which is afterward ratified by the Legislature, by the terms of which a fare to be charged is fixed, subject to the provision that nothing in the contract shall be construed to prescribe the Legislature regulating the fare, it was held that operation pursuant to the terms of the agreement precludes any consideration of what is known as going value in a proceeding before the Commission wherein the power of regulation so reserved to the Legislature is invoked. *Complaint of Louis P. Fuhrmann, etc., v. International Railway Company.* 420

11. As between a public utility and the public, capitalization should be allowed to the extent of the investment less depreciation; as between the buyer and seller of such utility, the market price naturally measures the value; where a question may be raised between buyer and seller because these valuations differ, the court and not the Commission has jurisdiction. *Joint Petition of Kate E. Smith, etc., and Solenville Electric Light & Power Company.* 436

12. A public service corporation has the right to file schedules giving notice of proposed change in rates without action on the part of the Commission, unless the rates affected have theretofore been fixed and are effective under an order of the Commission, and such filing is not evidence that the Commission has approved the rates named in the schedule. *Complaint of Village of Goshen v. Wallkill Transit Company.* 439

13. Where a franchise granted by a municipality to a public service corporation contains an agreement naming the rate to be charged for services rendered by the corporation, but reserves the right to the Legislature to regulate or reduce such rate, the Commission has jurisdiction to increase or decrease the rate mentioned in the schedule. *Id.*

14. A withdrawal of the practice of extending credit to a competing company, and the continuance of the practice with other customers in general, is discriminatory as well as unfair and unreasonable; the Commission has power to order the restoration of the prior practice. *Complaint of Postal Telegraph-Cable Company v. Western Union Telegraph Company.* 464

15. The proper function of the Commission in acting on a service complaint is to see that it is satisfied by the service being made efficient or adequate as may be found necessary, and where defects are susceptible of correction, such correction is the proper remedy instead of an allowance in the rate to offset defective service. *Complaint of H. C. Drake, etc., v. Dunkirk and Fredonia Telephone Company.* 530

Protection of Railroad Employees.

Locomotive engines should not be operated at such high rates of speed as to cause discomfort to engineers and firemen riding thereon, nor so great as to result in danger to the health or efficiency of such engineer or fireman. *Matter of Rate of Speed of Milk Trains, etc., New York, Ontario and Western Railroad.* 513

Public Convenience.

1. Public convenience can not be predicated upon a condition where the public patronage is insufficient reasonably to support the railroad from a financial standpoint. *Petition of The Yonkers Railroad Company.* 111

2. Before abandonment of a railroad station is ordered, it should be shown that the company had provided and used the most economical plan for conducting the business of the station. If after fair trial such a plan produces a loss to the company out of proportion to the public convenience, then the abandonment should be allowed. *Petition of United States Railroad Administration, Boston and Maine Railroad.* 115

Public Service.

1. Where a lighting corporation organized under the Transportation Corporations Law is manufacturing, distributing, and selling electric current for profit to a large number of

tenants in various buildings controlled by the same persons who control the lighting corporation, such service is public service, and falls under the supervision and jurisdiction of the Public Service Commission. *Petition of Lawrence Park Light, Heat and Power Company.* 19

2. If an electrical corporation is unwilling or unable to render adequate service, the existence of its plant and its franchise is not in itself a sufficient reason for denying the approval of the exercise of a franchise granted to another company. *Complaint of Herbert C. Persbacher et al. v. Callicoon Independent Electric Company, Inc.* 90

3. Increased cost of operating a station due to an increase of wages of the agent above an amount which such services are reasonably worth, does not furnish sufficient reason for shortening the hours of attendance at the station of such agent and thereby depriving the patrons of the services of an agent at the time of arrival of certain trains. *Complaint of Residents of Rensselaer Falls and Vicinity v. United States Railroad Administration, New York Central Railroad.* 270

4. A utility company has a monopoly of its franchise territory for the purpose of serving a public need, and that need is properly served only when the public is required to pay the lowest rate compatible with a reasonable return on the least expensive production and delivery of the service. *Complaint of Summer Residents of East Hampton v. East Hampton Electric Light Company.* 356

Public Service Commissions Law.

Section 35: Interchange tracks, etc. *Complaint of Batavia Chamber of Commerce v. United States Railroad Administration et al.* 397

Section 36: Long and short haul clause. *Complaint of Harry A. Wilkinson, etc., v. New York State Railways.* 476.

Section 49, subdivision 1: Power of the Commission to fix rates. *Petition of Schenectady Railway Company.* 182

Section 50: Changes in construction, etc. *Complaint of City of Oswego, etc., v. Empire State Railroad Corporation.* 393

Section 73: Bases for fixing prices to be charged. *Complaint of Louis P. Fuhrmann, etc., v. Iroquois Natural Gas Company.* 118

Sections 91, 92: Rates and charges must be just and reasonable; publication; discrimination. *Complaint of Board of Supervisors of Erie County v. New York Telephone Company et al.* 54

Sections 91, 96, 97: Regulations, equipment, practices, etc. *Complaint of Postal Telegraph-Cable Company v. Western Union Telegraph Company.* 464

Public Streets.

A franchise permitting the storage of cars in a street narrow in width and largely traveled should not be approved, and cars should be permitted to stand in such a street only a sufficient length of time to await their return trips in due course of prompt operation. *Petition of Hastings Railway Company, Inc.* 536

Qualifications of Railroad Employees.

Locomotive engines should not be towed under steam except under the control of an engineer or a fireman with at least one year's actual experience, and not in charge of the latter until he shall have established his ability to discharge properly the responsibilities of the situation by satisfactory examinations and tests. *Complaint against United States Railroad Administration, Boston and Maine Railroad.* 315

Railroad Crossings.

Where in the construction of a railroad the location of a highway and highway bridge are changed, and it is not shown that the right of way boundary lines of the railroad include or exclude the bridge, the question of responsibility for maintenance, depending on the determination of the legal question of boundary lines, is one for the Supreme Court. *Complaint of Residents of Phillipsport v. New York, Ontario and Western Railway Company.* 57

Railroad Law.

Section 21: Construction of route. *Complaint of Residents of Phillipsport v. New York, Ontario and Western Railway Company.* 57

Section 54-a, known as the Full Crew Law. *John Fitzgibbons, etc., v. United States Railroad Administration, New York Central Railroad.* 294

Section 101: Fares, regulation, etc. *Complaint of Village of Goshen v. Walkhill Transit Company.* 439

Section 178: Re-paving, repairs, etc. *Complaint of City of Oneonta, etc., v. Empire State Railroad Corporation.* 393

Section 181: Fares on street railroads. *Petition of Schenectady Railway Company.* 182

Section 184: Abandonment of route. *Petition of The Yonkers Railroad Company.* 111

Rates, Electricity and Gas.

1. A maximum price to be charged for gas manufactured and sold in a municipality is not controlling for gas manufactured in the municipality and transmitted by pipes and sold in neighboring municipalities. *Petition of Municipal Gas Company of the City of Albany.* 11

2. On complaint against advanced rates for natural gas, on investigation it was found that the existing rates were justified, but in the circumstances under which the investigation was made the Commission declined to commit itself for the purpose of other cases to the approximate valuation of the company's property made in this case. *Complaint of Trustees Village of Bolivar v. Empire Gas and Fuel Company, Ltd.* 31

3. A return of 9.6 per cent held not unreasonable in the case of a natural gas company drawing constantly upon an exhaustible and irreplaceable supply. *Id.*

4. A service classification of a lighting company which is so loose and indefinite as not to afford a reasonable method of accounting between the company and the customer, must either be abolished or superseded by a classification upon which the charge can be definitely fixed and easily verified by the consumer. *Complaint of La Bastille Lodge No. 494, I. O. O. F., v. Middleburgh and Schoharie Electric Light, Heat and Power Company.* 35

5. While the Commission does not feel justified in absolutely prohibiting flat rates, its experience is that they are extremely objectionable and promote constant friction between the furnisher and the consumer of the service. *Id.*

6. While 8 per cent return on investment is permissible and proper under the mandate of the statute prescribing a just and reasonable return, the Commission does not feel justified in accepting the present inflated prices as a basis for rate making. Under the facts in this case, an increased rate for gas from \$1.25 to \$1.35 per thousand cubic feet, estimated to yield a return of 4.35 per cent on investment, was held to be reasonable. *Complaint of Mayor of Amsterdam v. Chuctanunda Gas Light Company.* 37

7. Rates increased in Granville. *Complaint of Trustees of Village of Granville v. Granville Electric and Gas Company.* 72
8. Increase in gas rates in Owego authorized. *Complaint of Customers in Owego v. Owego Gas Light Company.* 108
9. Increase in price of manufactured gas and service charge authorized. *Complaint of Customers v. Gas Light Company, Waverly.* 172
10. On an examination of the evidence, a rate is fixed of 65 cents per thousand cubic feet, with 7 cents discount for prompt payment. *Complaint of George W. Lane, etc., v. Crystal City Gas Company.* 210
11. Increase in rates for gas in Saratoga Springs allowed. *Complaint of Mayor of Saratoga Springs v. Adirondack Electric Power Corporation.* 218
12. Rates for gas and service fixed on what traffic will bear instead of being based on a return on claimed value of property, under peculiar facts of the case. *Complaint of George W. Whitehead, etc., v. Niagara Falls Gas and Electric Light Company.* 233
13. Increase in the wholesale rate for electricity not approved. *Petition of Wayland-Stauben Power Company, Inc.* 275
14. Increase in rates for gas authorized. *Complaint of Trustees Village of Sag Harbor v. Long Island Gas Corporation.* 277
15. If a corporation furnishes both gas service and electric service, and complaint is made as to the rates for one class of service, it must be considered separately: the consumer of electricity may not be required to make good losses sustained in its gas service. *Complaint of Consumers of Gas, Newburgh, etc., v. Central Hudson Gas and Electric Company.* 303
16. After investigation, a rate for gas, estimated to yield a return of 6.13 per cent, with a possibility of 7 per cent, held not unreasonable under prevailing conditions. *Id.*
17. A rate limitation in the franchise of a company which was afterward merged by a company possessing a franchise free from limitations, held that the limitation which might be charged by the limiting franchise did not apply to gas furnished in mains laid in streets included within the unrestricted franchise and now operated by the common owner of both franchises. *Complaint of George S. Buck, etc., et al. v. William J. Judge et al.* 318
18. Increase in rates and ready to serve charge authorized. *Complaint of Summer Residents of East Hampton v. East Hampton Electric Light Company.* 356
19. Under existing circumstances, a rate of 45 cents net per thousand cubic feet for natural gas held not unreasonable. *Complaint of Purchasers of Gas, Allegany, v. Keystone Gas Company.* 446
20. On complaint for reviewing the rates charged for gas, held that in a prior case, on investigation, the rates were found to be reasonable, just and lawful. *Complaint of Consumers of Gas, Sag Harbor, v. Long Island Gas Corporation.* 449
21. Increase in rates, with ready to serve charge, authorized. *Complaint of Trustees of Bath v. The Bath Electric and Gas Light Company.* 498
22. On complaint as to rates charged for natural gas, facts discussed and rates approved. *Complaint of Purchasers of Natural Gas, Andover, v. Empire Gas and Fuel Company, Ltd.* 510

Rates, Telephone. *

1. Pending settlement of the question in the courts, the Commission does not feel justified in conceding to the Postmaster General power over intrastate telephone rates

or service by virtue of the joint resolution of the Congress and the proclamation of the President of July 22, 1918, under which he assumed possession and control of the telegraph and telephone systems of the country. *Complaint of M. Tanenbaum et al. v. A. S. Burlison, Postmaster General, and New York Telephone Company.* 27

2. Free service or reduced rates which telephone companies are permitted to extend to municipal corporations does not fall within the prohibitions against discrimination and undue advantage. *Complaint of Board of Supervisors of Erie County v. New York Telephone Company et al.* 54

3. Increase in rates approved. *Complaint of H. C. Drake, etc., v. Dunkirk and Fredonia Telephone Company.* 530

Ready to Serve Charge.

1. Increase in price of manufactured gas and service charge authorized. *Complaint of Customers v. Gas Light Company, Waverly.* 172

2. Ready to serve charge approved. *Complaint of Residents of Mumford v. Tri-County Natural Gas Company.* 175

3. A ready to serve charge for summer season customers authorized. *Complaint of Summer Residents of East Hampton v. East Hampton Electric Light Company.* 356

4. Increase in rates, with ready to serve charge, authorized. *Complaint of Trustees of Bath v. The Bath Electric and Gas Light Company.* 498

Reasonable Return.

1. A return of 9.6 per cent held not unreasonable in the case of a natural gas company drawing constantly upon an exhaustible and irreplaceable supply. *Complaint of Trustees Village of Bolivar v. Empire Gas and Fuel Company, Ltd.* 31

2. While 8 per cent return on investment is permissible and proper under the mandate of the statute prescribing a just and reasonable return, the Commission does not feel justified in accepting the present inflated prices as a basis for rate making. Under the facts in this case, an increased rate for gas from \$1.25 to \$1.35 per thousand cubic feet, estimated to yield a return of 4.35 per cent on investment, was held to be reasonable. *Complaint of Mayor of Amsterdam v. Chuctanunda Gas Light Company.* 37

Rehearing.

1. A petition for a rehearing must include matter not considered in previous petitions. *Complaint of Louis P. Fuhrmann, etc., v. Iroquois Natural Gas Company.* 179

2. On facts presented, application for rehearing denied. *Complaint of Residents of Theresa et al. v. United States Railroad Administration et al.* 506

Res Judicata.

On complaint for reviewing the rates charged for gas, held that in a prior case, on investigation, the rates were found to be reasonable, just, and lawful. *Complaint of Consumers of Gas, Sag Harbor, v. Long Island Gas Corporation.* 449

Service, Electricity and Gas.

1. Service rendered by a natural gas company has an important bearing on the rates to be charged. *Complaint of Residents of Mumford v. Tri-County Natural Gas Company.* 175

2. Complaints against local and temporary failures of service, such as are common to all public utilities, can not properly be considered a factor in the making of the rate. *Complaint of George S. Buck, etc., et al. v. William J. Judge et al.* 318

3. Service of gas discontinued by corporation was restored on consumer complying with the law. *Complaint of Edward M. Krier v. Nassau and Suffolk Lighting Company.* 495

Service, Electric Railroads.

Increase in fare allowed, one of the conditions being that transfer privileges should be continued. *Complaint of City of Jamestown v. Warren and Jamestown Street Railway Company et al.* 297

Service, Express.

1. The practice of an Express company to omit Sunday pick-up service and to terminate the week day pick-up service at 5 o'clock p. m., held to be reasonable. *Complaint of Patrons of American Railway Express Company in Buffalo.* 287

2. Abandonment of express service not approved. *Complaint of Victor Board of Trade v. American Railway Express Company.* 412

Service, Railroads.

1. The regulation of passenger and freight facilities at stations does not in any substantial way affect the interstate features of traffic and is well within the police powers of the several States. *Complaint of Village of Granville v. The Delaware and Hudson Company et al.* 41

2. On a petition to discontinue the maintenance of a ticket agent at a passenger station, it was shown that the agent performed other duties at the station, and that his net income from the three positions, assuming present conditions to continue during the year, would be something over \$5200: held that the remedy was to reduce the compensation rather than deprive the public of a service to which it had long been accustomed and to which it is reasonably entitled. *Petition of United States Railroad Administration, New York Central Railroad.* 45

3. Passenger service to be continued at Woods Falls station on the Rutland Railroad; freight traffic to be continued during the season of pulp wood shipping. *Petition of Rutland Railroad Company et al.* 226

4. Passenger train service ordered restored. *Complaint of Residents of Washington Mills, etc., v. United States Railroad Administration, Delaware, Lackawanna and Western Railroad.* 252

5. Where an agency station has become unprofitable on account of diminution of revenue due to war conditions and increase of cost of maintenance due to unnecessary increase in wages of the agent beyond the reasonable value of his services, consent of the Commission will not be granted to a proposed discontinuance of the services of the agent at the station. *Petition of United States Railroad Administration, Delaware and Hudson Railroad.* 282

6. Provisions of the Full Crew Law do not apply to a railroad operated under lease which is less than fifty miles in length. *John Fitzgibbons, etc., v. United States Railroad Administration, New York Central Railroad.* 294

7. Locomotive engines should not be towed under steam except under the control of an engineer or a fireman with at least one year's actual experience, and not in charge of the latter until he shall have established his ability to discharge properly the responsibilities of the situation by satisfactory examinations and tests. *Complaint against United Railroad Administration, Boston and Maine Railroad.* 315

8. An attempt to meet varying station agency requirements and conditions by a general standardisation not permitted, in a given case, to deprive the public of reasonably necessary service unless the standard fits the particular case. *Complaint of Charles M. Mark et al. v. Central New England Railway Company, etc.* 373

9. Passenger train schedules should be arranged for the accommodation of the greatest number of prospective passengers with least inconvenience to others. *Residents of Theresa et al. v. United States Railroad Administration et al.* 452

10. On complaint and after hearing, discontinuance of operation of certain trains denied. *Complaint of Mayor, etc., Oswego v. United States Railroad Administration et al.* 458

Service, Telegraph.

1. A withdrawal of the practice of extending credit to a competing company, and the continuance of the practice with other customers in general, is discriminatory as well as unfair and unreasonable; the Commission has power to order the restoration of the prior practice. *Complaint of Postal Telegraph-Cable Company v. Western Union Telegraph Company.* 464

Service, Telephone.

1. Pending settlement of the question in the courts, the Commission does not feel justified in conceding to the Postmaster General power over intrastate telephone rates or service by virtue of the joint resolution of the Congress and the proclamation of the President of July 22, 1918, under which he assumed possession and control of the telegraph and telephone systems of the country. *Complaint of M. Tanenbaum et al. v. A. S. Burleson, Postmaster General, and New York Telephone Company.* 27

2. The proper function of the Commission in acting upon a service complaint is to see that it is satisfied by the service being made efficient or adequate as may be found necessary, and where defects are susceptible of correction, such correction is the proper remedy instead of an allowance in the rate to offset defective service. *Complaint of H. C. Drake, etc., v. Dunkirk and Fredonia Telephone Company.* 530

3. Where service is inherently bad and beyond the reach of corrective measures, such inefficient service may properly be given consideration as bearing upon the rate. *Id.*

Signals, Railroads.

Audible-visible signals should be installed at all railroad crossings at grade where the view is obscured and the approach is dangerous. *Matter of Protection of Grade Crossings, New York Central and Delaware and Hudson Railroads.* 384

Speed of Trains, Railroads.

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